

**From:** Johnny Amaral  
**Sent:** Wednesday, January 6, 2016 11:47 AM  
**To:** Cole Rojewski  
**CC:** David Bernhardt; Tom Birmingham  
**Subject:** call

Cole,

Thanks for calling me back yesterday. Let me know if you still want to hop on a call with Tom, David and I this week to go over things.

Johnny

**From:** Rojewski, Cole  
**Sent:** Thursday, January 7, 2016 2:49 PM  
**To:** 'Johnny Amaral'  
**CC:** David Bernhardt; Tom Birmingham  
**Subject:** RE: call

Do you gentlemen have time for a call tomorrow maybe late afternoon maybe 1:30pm est?

---

**From:** Johnny Amaral [mailto:[jamaryl@westlandswater.org](mailto:jamaryl@westlandswater.org)]  
**Sent:** Wednesday, January 06, 2016 1:47 PM  
**To:** Rojewski, Cole  
**Cc:** David Bernhardt; Tom Birmingham  
**Subject:** call

Cole,

Thanks for calling me back yesterday. Let me know if you still want to hop on a call with Tom, David and I this week to go over things.

Johnny

**From:** Rojewski, Cole  
**Sent:** Thursday, January 7, 2016 3:20 PM  
**To:** 'Bernhardt, David L.'; 'Johnny Amaral'  
**CC:** Tom Birmingham  
**Subject:** RE: call

It doesn't. Does 9am pst / 12 pm est work? Or around there?

---

**From:** Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]  
**Sent:** Thursday, January 07, 2016 4:55 PM  
**To:** Rojewski, Cole; 'Johnny Amaral'  
**Cc:** Tom Birmingham  
**Subject:** RE: call

I can't be available at 1:30, would 2:30 work?

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**From:** Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
**Sent:** Thursday, January 07, 2016 4:49 PM  
**To:** 'Johnny Amaral'  
**Cc:** Bernhardt, David L.; Tom Birmingham  
**Subject:** RE: call

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**From:** Johnny Amaral  
**Sent:** Thursday, January 7, 2016 3:24 PM  
**To:** 'Bernhardt, David L.'; 'Rojewski, Cole'  
**CC:** 'Tom Birmingham'  
**Subject:** RE: call

That works for me too

---

**From:** Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]  
**Sent:** Thursday, January 7, 2016 2:21 PM  
**To:** 'Rojewski, Cole'; 'Johnny Amaral'  
**Cc:** Tom Birmingham  
**Subject:** RE: call

Yes. I can make that work.

---

**From:** Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
**Sent:** Thursday, January 07, 2016 5:20 PM  
**To:** Bernhardt, David L.; 'Johnny Amaral'  
**Cc:** Tom Birmingham  
**Subject:** RE: call

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**From:** Tom Birmingham  
**Sent:** Thursday, January 7, 2016 6:18 PM  
**To:** 'Rojewski, Cole'; 'Bernhardt, David L.'; 'Johnny Amaral'  
**Subject:** RE: call

I am not available until after 1:00 p.m. PST.

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]  
**Sent:** Thursday, January 7, 2016 2:20 PM  
**To:** 'Bernhardt, David L.' <DBernhardt@BHFS.com>; 'Johnny Amaral' <jamaral@westlandswater.org>  
**Cc:** Tom Birmingham <tbirmingham@westlandswater.org>  
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**From:** Johnny Amaral  
**Sent:** Thursday, January 7, 2016 10:08 PM  
**To:** Tom Birmingham  
**CC:** Rojewski, Cole; Bernhardt, David L.  
**Subject:** Re: call

Cole,

It's up to you. Let us know what you'd like to do.

Best,

Johnny Amaral

On Jan 7, 2016, at 5:18 PM, Tom Birmingham <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)> wrote:

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**Cc:** Tom Birmingham <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>  
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**From:** Rojewski, Cole  
**Sent:** Friday, January 8, 2016 8:10 AM  
**To:** 'Johnny Amaral'; Tom Birmingham  
**CC:** Bernhardt, David L.  
**Subject:** RE: call

How about David let's talk at 12pm est to talk about a few questions I have.

Then JA and TB let's have a quick call to figure out moving forward after 1pm pst.

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**From:** Johnny Amaral [mailto:[jamaryl@westlandswater.org](mailto:jamaryl@westlandswater.org)]  
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**To:** Tom Birmingham  
**Cc:** Rojewski, Cole; Bernhardt, David L.  
**Subject:** Re: call

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**From:** Johnny Amaral  
**Sent:** Friday, January 8, 2016 8:28 AM  
**To:** Rojewski, Cole  
**CC:** Tom Birmingham; Bernhardt, David L.  
**Subject:** Re: call

Works for me

Best,

Johnny Amaral

On Jan 8, 2016, at 7:10 AM, Rojewski, Cole <[Cole.Rojewski@mail.house.gov](mailto:Cole.Rojewski@mail.house.gov)> wrote:

How about David let's talk at 12pm est to talk about a few questions I have.

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**Subject:** Re: call

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I am not available until after 1:00 p.m. PST.

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**From:** Johnny Amaral  
**Sent:** Friday, January 8, 2016 8:57 AM  
**To:** Rojewski, Cole  
**CC:** Tom Birmingham; Bernhardt, David L.  
**Subject:** Re: call

Cole,

Tom isn't available until AFTER 1:30 pm PST. Want to try for around 2pm PST with Tom and I?

David and I are still available at 9am PST to chat.

Best,

Johnny Amaral

On Jan 8, 2016, at 7:10 AM, Rojewski, Cole <[Cole.Rojewski@mail.house.gov](mailto:Cole.Rojewski@mail.house.gov)> wrote:

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**To:** Tom Birmingham  
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**From:** Rojewski, Cole  
**Sent:** Friday, January 8, 2016 9:06 AM  
**To:** 'Johnny Amaral'  
**Subject:** RE: call

Great. Do you have a conf call # you want to use?

---

**From:** Johnny Amaral [mailto:[jamaral@westlandswater.org](mailto:jamaral@westlandswater.org)]  
**Sent:** Friday, January 08, 2016 10:57 AM  
**To:** Rojewski, Cole  
**Cc:** Tom Birmingham; Bernhardt, David L.  
**Subject:** Re: call

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<[jamaral@westlandswater.org](mailto:jamaral@westlandswater.org)>

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**From:** Rojewski, Cole

**Sent:** Friday, January 8, 2016 9:14 AM

**To:** jamaral@westlandswater.org; Bernhardt, David L. (DBernhardt@BHFS.com)

**CC:** Dunklin, Kristina

**Subject:** Todays Call

**Attachments:** 12 17 15 Drainage Leg Amendment.doc.docx; Friant Request - SWP Offset and Water Rights Protections (11-24-15).docx

Items I'd like to discuss and understand better on the 9am pst/ 12pm est call.

South Friant Concerns-

- Birmingham Edits worked out with Jeni and Dave covering the issues related to CVPIA and the Water Management Goal implementation. (attached)
- Our concern about 6(b(2) being limited to just the conversion of the contract and not being extended to the balance of the Act and it's implementation remains. It may be a simple bootstrap issue but one that could prevent future issues. Would appreciate your thoughts.

Friant Concerns-

- The priority concept is a key issue for Friant Water Authority. Language related to the priority concept was worked out amongst all the water users in the context of the federal drought legislation. We do not see any reason why this language, which has already been agreed to by multiple water users, should not be included in this bill. Therefore, please add the highlighted language in the attached bill (which is text we received from Kristina back in November after all parties had agreed to it).
- The other concept that the Friant contractors feel must be protected is the recaptured/recirculated water. That concept is not adequately covered in your section 10 language. We are willing to work with other parties to come up with language that is mutually agreeable, but that concept should be included in the bill text.

Cole Rojewski

Chief of Staff

Rep. David G. Valadao (CA-21)

Proposed language to be included in Westlands Drainage Settlement Legislation:

*Implementation of this Act and the Agreements authorized thereunder shall not:*

- (a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;*
- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project long-term water service, repayment, settlement, exchange, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or*
- (c) Alter the repayment obligation of any long-term water service, repayment, or settlement contractor receiving water or power from the Central Valley Project, or shift any costs to other such contractors that would otherwise have been properly assignable to San Luis Unit Contractors under this Act, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.*
- (d) Impair the ability of the United States to implement Paragraph 16 (The Water Management Goal) of the Stipulation of Settlement entered by the parties to Natural Resources Defense Council, et al. v. Rogers, et al, (Case NO CIV S-88-1658 (LKK/GGH) E.D.Cal.) dated September 13, 2006, as authorized to be implemented by Title X of Public Law 111-11.*
- (e) Diminish, impair, or otherwise affect in any manner any priorities for the allocation, delivery or use of water under applicable law, including any purposes of use and priorities established by Sections 3402 and 3406 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706).*

Sec. 06. State water project offset and water rights protections.

(a) Offset for State Water Project

1. **IMPLEMENTATION IMPACTS.**—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act on potential impacts to any consistency determination for operations of the State Water Project issued pursuant to California Fish and Game Code section 2080.1.
2. **ADDITIONAL YIELD.**—If, as a result of the application of this Act, the California Department of Fish and 3 Wildlife—
  - i. determines that operations of the State Water Project are inconsistent with the consistency determinations issued pursuant to California Fish and Game Code section 2080.1 for operations of the State Water Project; or
  - ii. requires take authorization under California Fish and Game Code section 2081 for operation of the State Water Project in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion; and

as a result, Central Valley Project yield is greater than it otherwise would have been, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset that reduced water supply.

3. **NOTIFICATION RELATED TO ENVIRONMENTAL PROTECTIONS.**—The Secretary of the Interior and Secretary of Commerce shall—
  - i. notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented; and
  - ii. confirm that those changes are consistent with the Endangered Species Act.

(b) Area of Origin and Water Rights Protections

1. **IN GENERAL.**—The Secretary of the Interior and the Secretary of Commerce, in carrying out the mandates of this Act, shall take no action that—
  - i. diminishes, impairs, or otherwise affects in any manner any area of origin, watershed of origin, county of origin, or any other water rights protection,

including rights to water appropriated prior to December 19, 1914, provided under State law;

- ii. limits, expands or otherwise affects the application of section 10505, 10505.5, 11128, 11460, 11461, 11462, 11463, or 12200 through 12220 of the California Water Code or any other provision of State water rights law, without respect to whether such a provision is specifically referred to in this Act; or
  - iii. diminishes, impairs, or otherwise affects in any manner any water rights or water rights priorities under applicable law. .
2. Section 7 of the Endangered Species Act- Any action proposed to be undertaken by the Secretaries pursuant to both this Act and Section 7 of the Endangered Species Act of 1973 (16 U.S. C. 1531 et seq.) shall be undertaken in a manner that does not alter water rights or water rights priorities established by California law or it shall not be undertaken at all. Nothing in this section affects the Secretaries' obligations under Section 7 of the Endangered Species Act.
3. EFFECT OF ACT.—
- i. Nothing in this Act affects or modifies any obligation of the Secretary of the Interior under section 8 of the Act of June 17, 1902 (32 Stat. 390, chapter 1093).
  - ii. Nothing in this Act diminishes, impairs, or otherwise affects in any manner any Project purposes or priorities for the allocation, delivery or use of water under applicable law, including the Project purposes and priorities established under Section 3402 and Section 3406 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706).

(c) No Redirected Adverse Impacts

- 1. IN GENERAL.—The Secretary of the Interior and Secretary of Commerce shall not carry out any specific action authorized under this Act that will directly or through State agency action indirectly result in the involuntary reduction of water supply to an individual, district, or agency that has in effect a contract for water with the State Water Project or the Central Valley Project, including Settlement and Exchange contracts, refuge contracts, and Friant Division contracts, as compared to the water supply that would be provided in the absence of action under this Act, and nothing in this Act is intended to modify, amend or affect any of the rights and obligations of the parties to such contracts.
- 2. ACTION ON DETERMINATION.— If, after exploring all options, the Secretary of the Interior or the Secretary of Commerce makes a final determination that a



proposed action under this Act cannot be carried out in accordance with subsection (1), that Secretary:

- i. shall document that determination in writing for that action, including a statement of the facts relied on, and an explanation of the basis, for the decision;
- ii. may exercise the Secretary's existing authority, including authority to undertake the drought-related actions otherwise addressed in this title, or to otherwise comply with other applicable law, including the Endangered Species Act (16 U.S.C. 1531 et seq.), and
- iii. shall comply with subsection (a).

(d) Allocations for Sacramento Valley Water Service Contractors

1. Definitions.—In this section:

- i. EXISTING CENTRAL VALLEY PROJECT AGRICULTURAL WATER SERVICE CONTRACTOR WITHIN THE SACRAMENTO RIVER WATERSHED.—The term “existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed” means any water service contractor within the Shasta, Trinity, or Sacramento River division of the Central Valley Project that has in effect a water service contract on the date of enactment of this Act that provides water for irrigation.
- ii. YEAR TERMS.—The terms “Above Normal”, “Below Normal”, “Dry”, and “Wet”, with respect to a year, have the meanings given those terms in the Sacramento Valley Water Year Type (40–30–30) Index.

2. Allocations of Water.—

- i. ALLOCATIONS.—Subject to subsection (c), the Secretary of the Interior shall make every reasonable effort in the operation of the Central Valley Project to allocate water provided for irrigation purposes to each existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in accordance with the following:
  1. Not less than 100 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in a “Wet” year.
  2. Not less than 100 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in an “Above Normal” year.

3. Not less than 100 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in a “Below Normal” year that is preceded by an “Above Normal” or “Wet” year.
    4. Not less than 50 percent of the contract quantity of the existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed in a “Dry” year that is preceded by a “Below Normal”, “Above Normal”, or “Wet” year.
    5. Subject to paragraph (ii), in any other year not identified in any of subparagraphs (1) through (4), not less than twice the allocation percentage to south-of-Delta Central Valley Project agricultural water service contractors, up to 100 percent.
  - ii. EFFECT OF SUBPARAGRAPH.—Nothing in paragraph (i)(5) precludes an allocation to an existing Central Valley Project agricultural water service contractor within the Sacramento River Watershed that is greater than twice the allocation percentage to a south-of-Delta Central Valley Project agricultural water service contractor.
3. Protection of Environment, Municipal and Industrial Supplies, and Other Contractors.—
- i. ENVIRONMENT.—Nothing in subsection (2) shall adversely affect—
    1. the cold water pool behind Shasta Dam;
    2. the obligation of the Secretary of the Interior to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4722); or
    3. any obligation—
      - a. of the Secretaries under the smelt biological opinion, the salmonid biological opinion, or any other applicable biological opinion; or
      - b. under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other applicable law (including regulations).
  - ii. MUNICIPAL AND INDUSTRIAL SUPPLIES.—Nothing in subsection (2)—
    1. modifies any provision of a water service contract that addresses municipal or industrial water shortage policies of the Secretaries;

2. affects or limits the authority of the Secretaries to adopt or modify municipal and industrial water shortage policies;
3. affects or limits the authority of the Secretaries to implement a municipal or industrial water shortage policy;
4. constrains, governs, or affects, directly or indirectly, the operations of the American River division of the Central Valley Project or any deliveries from that division or a unit or facility of that division; or
5. affects any allocation to a Central Valley Project municipal or industrial water service contractor by increasing or decreasing allocations to the contractor, as compared to the allocation the contractor would have received absent subsection (2).

iii. OTHER CONTRACTORS.—Nothing in subsection (b)—

1. affects the priority of any individual or entity with Sacramento River water rights, including an individual or entity with a Sacramento River settlement contract, that has priority to the diversion and use of Sacramento River water over water rights held by the United States for operations of the Central Valley Project;
2. affects the obligation of the United States to make a substitute supply of water available to the San Joaquin River exchange contractors;
3. affects the allocation of water to Friant division contractors of the Central Valley Project;
4. results in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant division; or
5. authorizes any actions inconsistent with State water rights law.

**From:** Rojewski, Cole  
**Sent:** Friday, January 8, 2016 10:39 AM  
**To:** 'Bernhardt, David L.'; jamaral@westlandswater.org  
**CC:** Dunklin, Kristina  
**Subject:** RE: Todays Call

So went against your advice....and spoke to Jenni. I actually think we might be good. She is checking on one thing but seems like it's a thumbs up.

---

**From:** Bernhardt, David L. [mailto:DBernhardt@BHFS.com]  
**Sent:** Friday, January 08, 2016 11:19 AM  
**To:** Rojewski, Cole; jamaral@westlandswater.org  
**Cc:** Dunklin, Kristina  
**Subject:** RE: Todays Call

Cole: Let's use the following call in number [REDACTED] code [REDACTED]

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]  
**Sent:** Friday, January 08, 2016 11:14 AM  
**To:** jamaral@westlandswater.org; Bernhardt, David L.  
**Cc:** Dunklin, Kristina  
**Subject:** Todays Call

Items I'd like to discuss and understand better on the 9am pst/ 12pm est call.

South Friant Concerns-

- Birmingham Edits worked out with Jeni and Dave covering the issues related to CVPIA and the Water Management Goal implementation. (attached)
- Our concern about 6(b)(2) being limited to just the conversion of the contract and not being extended to the balance of the Act and it's implementation remains. It may be a simple bootstrap issue but one that could prevent future issues. Would appreciate your thoughts.

Friant Concerns-

- The priority concept is a key issue for Friant Water Authority. Language related to the priority concept was worked out amongst all the water users in the context of the federal drought legislation. We do not see any reason why this language, which has already been agreed to by multiple water users, should not be included in this bill. Therefore, please add the highlighted language in the attached bill (which is text we received from Kristina back in November after all parties had agreed to it).
- The other concept that the Friant contractors feel must be protected is the recaptured/recirculated water. That concept is not adequately covered in your section 10 language. We are willing to work with other parties to come up with language that is mutually agreeable, but that concept should be included in the bill text.

Cole Rojewski  
Chief of Staff  
Rep. David G. Valadao (CA-21)

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**From:** Rojewski, Cole

**Sent:** Friday, January 8, 2016 12:13 PM

**To:** jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L. (DBernhardt@BHFS.com); Smith, Ryan A. (RSmith@BHFS.com)

**CC:** Dunklin, Kristina

**Subject:** Most Updated Verision of Settlement Bill

**Attachments:** VALADA\_013\_xml.pdf

Attached

Cole Rojewski

Chief of Staff

Rep. David G. Valadao (CA-21)

.....  
(Original Signature of Member)

114TH CONGRESS  
2D SESSION

# H. R.

To affirm an agreement between the United States and Westlands Water  
District dated September 15, 2015, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

Mr. VALADAO introduced the following bill; which was referred to the  
Committee on

---

# A BILL

To affirm an agreement between the United States and  
Westlands Water District dated September 15, 2015,  
and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.— This Act may be cited as the  
5       “San Luis Unit Drainage Resolution Act”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

- Sec. 3. Approval of agreements.
- Sec. 4. Relief from drainage obligation.
- Sec. 5. Drainage implementation.
- Sec. 6. Water delivery contracts.
- Sec. 7. Repayment obligations.
- Sec. 8. Transfer of title to certain facilities.
- Sec. 9. Compliance with applicable law.
- Sec. 10. No water supply or financial impacts on other Central Valley Project contractors.
- Sec. 11. Restoration fund payments by Westlands Water District.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) NORTHERLY DISTRICTS AGREEMENT.—The  
4 term “Northerly Districts Agreement” means the  
5 Agreement among the United States, San Luis  
6 Water District, Panoche Water District, and  
7 Pacheco Water District.

8 (2) PROJECT.—The term “Project” means the  
9 Central Valley Project, owned by the United States  
10 and managed by the Department of the Interior,  
11 Bureau of Reclamation.

12 (3) PROJECT WATER.—The term “Project  
13 Water” means all water that is developed, diverted,  
14 stored, or delivered by the Secretary in accordance  
15 with the statutes authorizing the Project and in ac-  
16 cordance with the terms and conditions of water  
17 rights acquired pursuant to California law.

18 (4) REPAYMENT CONTRACT.—The term “repay-  
19 ment contract” means the repayment contract con-  
20 verted under section 6(a).



1           (5) SAN LUIS ACT.—The term “San Luis Act”  
2       means the Act of June 3, 1960 (Public Law 86–  
3       488), and all Acts amendatory thereof and supple-  
4       mentary thereto.

5           (6) SAN LUIS UNIT.—The term “San Luis  
6       Unit” means those lands identified in section 1 of  
7       the San Luis Act.

8           (7) SAN LUIS UNIT CONTRACTORS.—The term  
9       “San Luis Unit Contractors” means Westlands  
10      Water District (including Broadview Water District  
11      lands annexed within Westlands Water District),  
12      San Luis Water District, Panoche Water District,  
13      and Pacheco Water District.

14          (8) SECRETARY.—The term “Secretary” means  
15      the Secretary of the Interior.

16          (9) WESTLANDS AGREEMENT.—The term  
17      “Westlands Agreement” means the “Agreement be-  
18      tween the United States and Westlands Water Dis-  
19      trict” to settle litigation concerning the United  
20      States’ duty to provide drainage service, entered  
21      September 15, 2015.

22   **SEC. 3. APPROVAL OF AGREEMENTS.**

23      Notwithstanding any other provision of law, unless  
24      otherwise specified herein, the Secretary is hereby directed

1 to implement the terms and conditions of the Westlands  
2 Agreement and the Northerly Districts Agreement.

3 **SEC. 4. RELIEF FROM DRAINAGE OBLIGATION.**

4 The San Luis Act is amended as follows:

5 (1) In the first section—

6 (A) in the second sentence, by striking  
7 “distribution systems, drains,”; and

8 (B) in the sixth sentence—

9 (i) by striking “the Secretary has (1)”  
10 and inserting “the Secretary has”; and

11 (ii) by striking “, and (2) received”  
12 and all that follows through “December,  
13 17, 1956”.

14 (2) In section 5, by striking the first sentence  
15 and inserting “Notwithstanding any other provision  
16 of law, the Secretary of the Interior shall have no  
17 duty to provide drainage or drainage service to the  
18 San Luis Unit. Each contractor within the San Luis  
19 Unit that receives water for the purpose of irrigation  
20 shall be responsible for the management of drainage  
21 water within its boundaries, in accordance with Fed-  
22 eral and California law consistent with the  
23 Westlands Agreement and Northerly District Agree-  
24 ment respectively.”.

25 (3) In section 8—

1 (A) in the first sentence, by striking “other  
2 than distribution systems and drains,”; and  
3 (B) in the third sentence—  
4 (i) by striking “(a) for construction”  
5 and all that follows through “ and (b)”;  
6 and  
7 (ii) by striking “: *Provided*” and all  
8 that follows through “such works are  
9 placed in service”.

10 **SEC. 5. DRAINAGE IMPLEMENTATION.**

11 The Westlands Water District shall assume all legal  
12 responsibility for the management of drainage water with-  
13 in its boundaries in accordance with Federal and Cali-  
14 fornia law, and in accordance with the Westlands Agree-  
15 ment and Westlands Water District shall not discharge  
16 drain water outside of its boundaries.

17 **SEC. 6. WATER DELIVERY CONTRACTS.**

18 (a) CONTRACT CONVERSION.—The Secretary shall  
19 convert the Westlands Water District existing long-term  
20 or interim renewal water service contract entered into  
21 under section 9(e) of the Act of August 4, 1939 (53 Stat.  
22 1196), to a repayment contract under section 9(d) and  
23 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195,  
24 1194) consistent with the Westlands Agreement.

25 (b) ALLOCATION DECISIONS.—

1           (1) IN GENERAL.—Notwithstanding subsection  
2           (a) and as provided in the Westlands Agreement, the  
3           Secretary shall make allocation decisions in the  
4           Project consistent with the requirements of Federal  
5           law (including the Endangered Species Act of 1973  
6           and Reclamation law) and applicable California  
7           State Water Resources Control Board requirements.

8           (2) CONVERSION OF CONTRACT.—Conversion of  
9           Westlands Water District’s contract pursuant to  
10          subsection (a) shall not afford Westlands Water Dis-  
11          trict greater or lesser rights to an annual allocation  
12          of Project Water than Westlands Water District had  
13          before that conversion.

14          (3) LIMITATION ON LIABILITY.—No liability  
15          shall accrue against the United States or any of its  
16          officers, agents, or employees for any damage, direct  
17          or indirect, arising from a condition of shortage in  
18          the amount of water available for delivery to the San  
19          Luis Unit Contractors caused by—

20                 (A) errors in physical operations of the  
21          Project;

22                 (B) physical causes beyond the control of  
23          the Contracting Officer, including drought; or

24                 (C) actions taken by the Contracting Offi-  
25          cer to meet legal obligations.

1 (c) WATER SERVICE CONTRACT FOR LEMOORE  
2 NAVAL AIR STATION.—

3 (1) CONTRACT REQUIRED.—The Secretary shall  
4 enter into a contract under section 9(e) of the Act  
5 of August 4, 1939 (53 Stat. 1196), with the Sec-  
6 retary of the Navy for the delivery of Project Water  
7 to the Lemoore Naval Air Station to meet the irriga-  
8 tion needs of Lemoore Naval Air Station associated  
9 with air operations. The contract amount of Project  
10 Water made available to the Lemoore Naval Air Sta-  
11 tion under such contract shall be determined by the  
12 Secretary through technical analysis with the  
13 Lemoore Naval Air Station.

14 (2) CONDITION OF SHORTAGE.—In any year in  
15 which there may occur a condition of shortage in the  
16 amount of water available for delivery, the Con-  
17 tracting Officer shall allocate the available Project  
18 Water amount to Lemoore Naval Air Station in ac-  
19 cordance with the allocation steps for municipal and  
20 industrial water service contractors under the Cen-  
21 tral Valley Project Municipal and Industrial Water  
22 Shortage Policy (as in effect on the effective date of  
23 the repayment contract). For purposes of deter-  
24 mining “historical use” under the policy, past water  
25 use for irrigation needs by the Lemoore Naval Air

1 Station under the contract authorized by this section  
2 or such use previous to the contract may be consid-  
3 ered.

4 **SEC. 7. REPAYMENT OBLIGATIONS.**

5 (a) SUSPENSION OF CAPITAL OBLIGATION.—  
6 Westlands Water District's capital repayment obligation  
7 and payments under its water service contracts and the  
8 April 1, 1965, repayment contract between the United  
9 States and Westlands Water District (contract numbered  
10 14-06-200-2020-A) as further defined in subsection (b),  
11 is suspended until the execution of the repayment con-  
12 tract. Upon execution of that repayment contract,  
13 Westlands Water District shall receive a credit against fu-  
14 ture operation and maintenance costs payable to the  
15 United States in the amount of the capital costs under  
16 the water service contracts and the 1965 Repayment Con-  
17 tract paid by Westlands Water District between the date  
18 of the Westlands Agreement and the date of the enact-  
19 ment of this Act. Costs incurred by the United States for  
20 revaluating, planning, or providing drainage service to  
21 Westlands Water District shall be non-reimbursable, as  
22 set forth in paragraph (9)(C)(iv) of the Westlands Agree-  
23 ment.

24 (b) RELIEF OF CAPITAL REPAYMENT OBLIGA-  
25 TIONS.—Upon the date of execution of the repayment con-

1 tract, and as set forth in the Westlands Agreement, the  
2 following shall take effect:

3 (1) IN GENERAL.—Westlands Water District  
4 shall be relieved of—

5 (A) its capital repayment obligations under  
6 the June 5, 1963, water service contract be-  
7 tween the United States and Westlands Water  
8 District (contract number 14–06–200–495–A)  
9 providing for water service, or any renewals  
10 thereof, and any water service contracts as-  
11 signed to Westlands Water District, Westlands  
12 Distribution District No. 1, and Westlands Dis-  
13 tribution District No. 2 existing as of the date  
14 of the execution of the Westlands Agreement;  
15 and

16 (B) any remaining repayment obligation  
17 under the April 1, 1965, repayment contract  
18 between the United States and Westlands  
19 Water District (contract numbered 14–06–200–  
20 2020–A).

21 (2) LIMITATION ON RELIEF.—Repayment relief  
22 granted in paragraph (1) shall not extend to—

23 (A) Westlands Water District’s operation  
24 and maintenance obligations, whether payable

1 to the United States or to an Operating Non-  
2 Federal Entity;

3 (B) construction costs or other capitalized  
4 costs not yet allocated to or incurred by  
5 Westlands Water District as of the date of the  
6 Westlands Agreement, including costs attrib-  
7 utable to the Folsom Safety of Dams modifica-  
8 tions, the B.F. Sisk corrective action study, or  
9 any Safety of Dams; or

10 (C) the repayment of future capital costs  
11 incurred after the date of execution of the  
12 Westlands Agreement.

13 (c) REPAYMENT OF COSTS.—Central Valley Project  
14 construction costs or other capitalized costs allocated to  
15 Westlands Water District after the date of the Westlands  
16 Agreement, and properly assignable to Westlands Water  
17 District, shall be repaid in not more than 5 years after  
18 notification of the allocation of such amount of less than  
19 \$5,000,000. If such amount is \$5,000,000 or greater, such  
20 cost shall be repaid as provided by applicable Reclamation  
21 law. Any additional costs that may have been assigned to  
22 Westlands Water District pursuant to paragraph  
23 (9)(C)(iv) of the Westlands Agreement related to the Cen-  
24 tral Valley Project final cost allocation shall be non-reim-  
25 bursable.



1 (d) APPLICABILITY OF CERTAIN PROVISIONS.—

2 (1) RECLAMATION REFORM ACT.—Upon dis-  
3 charge of the capital repayment obligation as pro-  
4 vided in subsection (b), the provisions of section  
5 213(a) and (b) of the Reclamation Reform Act of  
6 1982 (96 Stat. 1269) shall be deemed to apply to  
7 lands in Westlands Water District, and the owner-  
8 ship and full cost pricing limitations in any provision  
9 of Federal reclamation law shall not apply to lands  
10 in the District notwithstanding the subsequent allo-  
11 cation of construction costs or other capitalized costs  
12 to the District. These exemptions shall be carried  
13 out in accordance with the process set forth in the  
14 Westlands Agreement.

15 (2) OTHER PROVISIONS.—Nothing in this Act is  
16 intended to relieve the San Luis Unit Contractors of  
17 any other obligations under Reclamation Law in-  
18 cluding Restoration Fund charges pursuant to sec-  
19 tion 3407(d) of Public Law 102–575.

20 **SEC. 8. TRANSFER OF TITLE TO CERTAIN FACILITIES.**

21 (a) IN GENERAL.—Upon the execution of the repay-  
22 ment contract, or as soon thereafter as practicable, the  
23 Secretary shall transfer to Westlands Water District title  
24 to the following:

1           (1) San Luis Canal System, excluding the main  
2           canal that is integrated with the California Aque-  
3           duct. These appurtenant features include—

4                 (A) internal water distribution system  
5                 within Westlands, including approximately  
6                 1,045 miles of buried pipeline;

7                 (B) pumping plants within Westlands, in-  
8                 cluding—

9                         (i) San Luis Canal Left and Right  
10                        Bank pumping plants;

11                       (ii) Pumping Plants P1 through P38  
12                        located at the head end of the gravity  
13                        laterals to supply the head required for the  
14                        “P” laterals;

15                       (iii) Pumping Plants, tanks, res-  
16                        ervoirs, relift pumping plants to serve  
17                        lands west of the San Luis Canal; and

18                       (iv) Pumping Plant 7.05 off Lateral  
19                        7; and

20                 (C) related structures, appurtenances,  
21                 pumping plants, pumps, motors, meters, valves,  
22                 tanks, transformers, and electrical equipment  
23                 as specifically identified through the title trans-  
24                 fer process of federally owned facilities, equip-  
25                 ment, and real property.

1           (2) Mendota Pool diversion facilities operated  
2       by Westlands Water District System, including the  
3       following:

4           (A) Inlet Canal from the Fresno Slough.

5           (B) Pumping plants, 6-1, 6-2, 7-1, 7-2.

6           (C) Related structures, appurtenances,  
7       pumps, motors, meters, valves, tanks, trans-  
8       formers, and electrical equipment as specifically  
9       identified through the title transfer process of  
10      federally owned facilities, equipment, and real  
11      property.

12          (3) Pleasant Valley System, including the fol-  
13      lowing:

14          (A) Intake canal and pipeline.

15          (B) Pleasant Valley Pumping Plant.

16          (C) Coalinga Canal, including related  
17      check structures, turnouts, and headworks.

18          (D) Pleasant Valley distribution system  
19      and pumping plants along the Coalinga Canal.

20          (E) Related structures, appurtenances,  
21      pumps, motors, meters, valves, tanks, trans-  
22      formers, and electrical equipment as specifically  
23      identified through the title transfer process of  
24      federally owned facilities, equipment, and real  
25      property.

1           (4) Drainage collection system, including the  
2 following:

3           (A) Carrier and collector pipelines, sumps,  
4 and sump pumps.

5           (B) San Luis Drain from Sta 6678+45 to  
6 Sta 8520+22.87. (Crossing with DMC to La-  
7 guna Ave crossing.)

8           (C) Related structures, appurtenances,  
9 pumps, motors, meters, valves, tanks, trans-  
10 formers, and electrical equipment as specifically  
11 identified through the title transfer process of  
12 federally owned facilities, equipment, and real  
13 property.

14          (5) Tranquillity Field Office, including the fol-  
15 lowing:

16           (A) Buildings at 32650 West Adams Ave-  
17 nue, Tranquillity, CA 93668.

18           (B) All related fixtures and furnishings as  
19 specifically identified through the title transfer  
20 process of federally owned facilities, equipment,  
21 and real property.

22          (6) Huron field office, including the following:

23           (A) Buildings at 32450 South Lassen Ave-  
24 nue, Huron, CA 93234.

1 (B) All related fixtures and furnishings as  
2 specifically identified through the title transfer  
3 process of federally owned facilities, equipment,  
4 and real property.

5 (7) All real property interests held by the  
6 United States in lands underlying or otherwise asso-  
7 ciated with the facilities and equipment listed in this  
8 subsection (a), including all fee title, easements, and  
9 rights of way.

10 (b) PAYMENT OF COSTS.—Except as specifically pro-  
11 vided in this Act, any transfer of title to the Pleasant Val-  
12 ley Pumping Plant, the Coalinga Canal, and any associ-  
13 ated facilities shall not relieve any other Project Water  
14 service or repayment contractor of the requirement to pay  
15 any allocated costs associated with those conveyance or  
16 pumping facilities that are properly allocated to those con-  
17 tractors under existing law and Project ratesetting poli-  
18 cies.

19 (c) LIABILITY ON TRANSFER OF TITLE.—Upon  
20 transfer of title to any facilities pursuant to subsection  
21 (a), Westlands Water District shall, as a condition to such  
22 transfer, formally agree as of the date of transfer to—  
23 (1) hold the United States harmless and indem-  
24 nify the United States for any and all claims, cost,  
25 damages, and judgments of any kind arising out of

1 any act, omission, or occurrence relating to the  
2 transferred facilities, except for such claims, costs,  
3 damages arising from acts of negligence committed  
4 by the United States or by its employees, agents, or  
5 contractors, prior to the date of title transfer, for  
6 which the United States is found liable under the  
7 Federal Tort Claims Act; and

8 (2) assume full responsibility for correcting and  
9 financing any repairs or deficiencies that may exist  
10 at the time of or following title transfer.

11 (d) COMPLIANCE.—The Secretary and Westlands  
12 Water District shall comply with all applicable require-  
13 ments under Federal and California law before title to a  
14 facility is transferred pursuant to this section.

15 **SEC. 9. COMPLIANCE WITH APPLICABLE LAW.**

16 In implementing the measures authorized by this Act,  
17 the Secretary shall comply with all applicable Federal  
18 laws, rules, and regulations, including the National Envi-  
19 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
20 and the Endangered Species Act of 1973 (16 U.S.C. 1531  
21 et seq.), as necessary.

1   **SEC. 10. NO WATER SUPPLY OR FINANCIAL IMPACTS ON**  
2                   **OTHER CENTRAL VALLEY PROJECT CON-**  
3                   **TRACTORS.**

4       Implementation of this Act and the Agreements au-  
5   thorized thereunder shall not—

6           (1) result in the involuntary reduction in the  
7       contract water allocation to any Central Valley  
8       Project long-term water service, repayment, settle-  
9       ment, exchange, or refuge contractor, including con-  
10      tractors in the Friant Division of the Central Valley  
11      Project;

12          (2) modify, amend or affect any of the rights  
13      and obligations of the parties to any Central Valley  
14      Project long-term water service, repayment, settle-  
15      ment, exchange, or refuge contract, including con-  
16      tracts in the Friant Division of the Central Valley  
17      Project; or

18          (3) alter the repayment obligation of any long-  
19      term water service, repayment, or settlement con-  
20      tractor receiving water or power from the Central  
21      Valley Project, or shift any costs to other such con-  
22      tractors that would otherwise have been properly as-  
23      signable to San Luis Unit Contractors under this  
24      Act, including operations and maintenance costs,  
25      construction costs, or other capitalized costs allo-

1 cated to San Luis Unit Contractors after the date  
2 of this Act.

3 (4) Impair the ability of the United States to  
4 implement Paragraph 16 (The Water Management  
5 Goal) of the Stipulation of Settlement entered by the  
6 parties to *Natural Resources Defense Council, et al.*  
7 *v. Rogers, et al.*, (Case NO CIV S-88-1658 (LKK/  
8 GGH) E.D.Cal.) dated September 13, 2006, as au-  
9 thorized to be implemented by title X of Public Law  
10 111-11.

11 (5) Diminish, impair, or otherwise affect in any  
12 manner any priorities for the allocation, delivery, or  
13 use of water under applicable law, including any  
14 purposes of use and priorities established by sections  
15 3402 and 3406 of the Central Valley Project Im-  
16 provement Act (Public Law 102-575; 106 Stat.  
17 4706).

18 **SEC. 11. RESTORATION FUND PAYMENTS BY WESTLANDS**  
19 **WATER DISTRICT.**

20 For the purpose of avoiding a shift of Central Valley  
21 Project Restoration Fund payments from Westlands  
22 Water District to Central Valley Project preference power  
23 contractors, for any year in which the allocation of water  
24 for south-of-Delta Central Valley Project long-term water  
25 service contractors or repayment contractors is greater



1 than 75 percent, the Secretary shall calculate for  
2 Westlands Water District a per acre foot Restoration  
3 Fund payment based on a projection that Westlands  
4 Water District would take delivery of the allocation made  
5 to south-of-Delta Central Valley Project long-term water  
6 service contractors or repayment contractors.

**From:** Johnny Amaral

**Sent:** Friday, January 8, 2016 12:30 PM

**To:** 'Rojewski, Cole'; tbirmingham@westlandswater.org; 'Bernhardt, David L.'; 'Smith, Ryan A.'

**CC:** 'Dunklin, Kristina'

**Subject:** RE: Most Updated Verision of Settlement Bill

Thanks Cole.

I confirmed with Tom that 2pm PST works for our conference call.

Call 800-████-████ Pass code is █████

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]

**Sent:** Friday, January 8, 2016 11:13 AM

**To:** jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L. (DBernhardt@BHFS.com); Smith, Ryan A. (RSmith@BHFS.com)

**Cc:** Dunklin, Kristina

**Subject:** Most Updated Verision of Settlement Bill

Attached

Cole Rojewski

Chief of Staff

Rep. David G. Valadao (CA-21)

**From:** Smith, Ryan A.

**Sent:** Monday, January 11, 2016 9:31 AM

**To:** 'Rojewski, Cole'; jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L.

**CC:** Dunklin, Kristina

**Subject:** RE: Most Updated Version of Settlement Bill

**Attachments:** VALADA\_013\_xml 1 11 16.pdf

Cole,

With one minor exception the bill draft looks good. Our proposed change is below:

**SEC. 5. DRAINAGE IMPLEMENTATION.**

The Westlands Water District shall assume all legal responsibility for the management of drainage water within its boundaries in accordance with Federal and California law, and in accordance with the Westlands Agreement; **provided that** ~~and~~ Westlands Water District shall not discharge drain water outside of its boundaries.

Thanks again for all your hard work on the legislation.

Please let me know if you have any questions.

Thanks,

Ryan

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]

**Sent:** Friday, January 08, 2016 2:13 PM

**To:** jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L.; Smith, Ryan A.

**Cc:** Dunklin, Kristina

**Subject:** Most Updated Version of Settlement Bill

Attached

Cole Rojewski

Chief of Staff

Rep. David G. Valadao (CA-21)

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.....  
(Original Signature of Member)

114TH CONGRESS  
2D SESSION

# H. R.

To affirm an agreement between the United States and Westlands Water  
District dated September 15, 2015, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

Mr. VALADAO introduced the following bill; which was referred to the  
Committee on

---

# A BILL

To affirm an agreement between the United States and  
Westlands Water District dated September 15, 2015,  
and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.— This Act may be cited as the  
5       “San Luis Unit Drainage Resolution Act”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

- Sec. 3. Approval of agreements.
- Sec. 4. Relief from drainage obligation.
- Sec. 5. Drainage implementation.
- Sec. 6. Water delivery contracts.
- Sec. 7. Repayment obligations.
- Sec. 8. Transfer of title to certain facilities.
- Sec. 9. Compliance with applicable law.
- Sec. 10. No water supply or financial impacts on other Central Valley Project contractors.
- Sec. 11. Restoration fund payments by Westlands Water District.

**1 SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) NORTHERLY DISTRICTS AGREEMENT.—The  
4 term “Northerly Districts Agreement” means the  
5 Agreement among the United States, San Luis  
6 Water District, Panoche Water District, and  
7 Pacheco Water District.

8 (2) PROJECT.—The term “Project” means the  
9 Central Valley Project, owned by the United States  
10 and managed by the Department of the Interior,  
11 Bureau of Reclamation.

12 (3) PROJECT WATER.—The term “Project  
13 Water” means all water that is developed, diverted,  
14 stored, or delivered by the Secretary in accordance  
15 with the statutes authorizing the Project and in ac-  
16 cordance with the terms and conditions of water  
17 rights acquired pursuant to California law.

18 (4) REPAYMENT CONTRACT.—The term “repay-  
19 ment contract” means the repayment contract con-  
20 verted under section 6(a).

1           (5) SAN LUIS ACT.—The term “San Luis Act”  
2       means the Act of June 3, 1960 (Public Law 86–  
3       488), and all Acts amendatory thereof and supple-  
4       mentary thereto.

5           (6) SAN LUIS UNIT.—The term “San Luis  
6       Unit” means those lands identified in section 1 of  
7       the San Luis Act.

8           (7) SAN LUIS UNIT CONTRACTORS.—The term  
9       “San Luis Unit Contractors” means Westlands  
10      Water District (including Broadview Water District  
11      lands annexed within Westlands Water District),  
12      San Luis Water District, Panoche Water District,  
13      and Pacheco Water District.

14          (8) SECRETARY.—The term “Secretary” means  
15      the Secretary of the Interior.

16          (9) WESTLANDS AGREEMENT.—The term  
17      “Westlands Agreement” means the “Agreement be-  
18      tween the United States and Westlands Water Dis-  
19      trict” to settle litigation concerning the United  
20      States’ duty to provide drainage service, entered  
21      September 15, 2015.

22   **SEC. 3. APPROVAL OF AGREEMENTS.**

23      Notwithstanding any other provision of law, unless  
24      otherwise specified herein, the Secretary is hereby directed

1 to implement the terms and conditions of the Westlands  
2 Agreement and the Northerly Districts Agreement.

3 **SEC. 4. RELIEF FROM DRAINAGE OBLIGATION.**

4 The San Luis Act is amended as follows:

5 (1) In the first section—

6 (A) in the second sentence, by striking  
7 “distribution systems, drains,”; and

8 (B) in the sixth sentence—

9 (i) by striking “the Secretary has (1)”  
10 and inserting “the Secretary has”; and

11 (ii) by striking “, and (2) received”  
12 and all that follows through “December,  
13 17, 1956”.

14 (2) In section 5, by striking the first sentence  
15 and inserting “Notwithstanding any other provision  
16 of law, the Secretary of the Interior shall have no  
17 duty to provide drainage or drainage service to the  
18 San Luis Unit. Each contractor within the San Luis  
19 Unit that receives water for the purpose of irrigation  
20 shall be responsible for the management of drainage  
21 water within its boundaries, in accordance with Fed-  
22 eral and California law consistent with the  
23 Westlands Agreement and Northerly District Agree-  
24 ment respectively.”.

25 (3) In section 8—

1 (A) in the first sentence, by striking “other  
2 than distribution systems and drains,”; and  
3 (B) in the third sentence—  
4 (i) by striking “(a) for construction”  
5 and all that follows through “ and (b)”;  
6 and  
7 (ii) by striking “: *Provided*” and all  
8 that follows through “such works are  
9 placed in service”.

10 **SEC. 5. DRAINAGE IMPLEMENTATION.**

11 The Westlands Water District shall assume all legal  
12 responsibility for the management of drainage water with-  
13 in its boundaries in accordance with Federal and Cali-  
14 fornia law, and in accordance with the Westlands Agree-  
15 ment and Westlands Water District shall not discharge  
16 drain water outside of its boundaries.

17 **SEC. 6. WATER DELIVERY CONTRACTS.**

18 (a) CONTRACT CONVERSION.—The Secretary shall  
19 convert the Westlands Water District existing long-term  
20 or interim renewal water service contract entered into  
21 under section 9(e) of the Act of August 4, 1939 (53 Stat.  
22 1196), to a repayment contract under section 9(d) and  
23 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195,  
24 1194) consistent with the Westlands Agreement.

25 (b) ALLOCATION DECISIONS.—



1           (1) IN GENERAL.—Notwithstanding subsection  
2           (a) and as provided in the Westlands Agreement, the  
3           Secretary shall make allocation decisions in the  
4           Project consistent with the requirements of Federal  
5           law (including the Endangered Species Act of 1973  
6           and Reclamation law) and applicable California  
7           State Water Resources Control Board requirements.

8           (2) CONVERSION OF CONTRACT.—Conversion of  
9           Westlands Water District’s contract pursuant to  
10          subsection (a) shall not afford Westlands Water Dis-  
11          trict greater or lesser rights to an annual allocation  
12          of Project Water than Westlands Water District had  
13          before that conversion.

14          (3) LIMITATION ON LIABILITY.—No liability  
15          shall accrue against the United States or any of its  
16          officers, agents, or employees for any damage, direct  
17          or indirect, arising from a condition of shortage in  
18          the amount of water available for delivery to the San  
19          Luis Unit Contractors caused by—

20                 (A) errors in physical operations of the  
21          Project;

22                 (B) physical causes beyond the control of  
23          the Contracting Officer, including drought; or

24                 (C) actions taken by the Contracting Offi-  
25          cer to meet legal obligations.

1 (c) WATER SERVICE CONTRACT FOR LEMOORE  
2 NAVAL AIR STATION.—

3 (1) CONTRACT REQUIRED.—The Secretary shall  
4 enter into a contract under section 9(e) of the Act  
5 of August 4, 1939 (53 Stat. 1196), with the Sec-  
6 retary of the Navy for the delivery of Project Water  
7 to the Lemoore Naval Air Station to meet the irriga-  
8 tion needs of Lemoore Naval Air Station associated  
9 with air operations. The contract amount of Project  
10 Water made available to the Lemoore Naval Air Sta-  
11 tion under such contract shall be determined by the  
12 Secretary through technical analysis with the  
13 Lemoore Naval Air Station.

14 (2) CONDITION OF SHORTAGE.—In any year in  
15 which there may occur a condition of shortage in the  
16 amount of water available for delivery, the Con-  
17 tracting Officer shall allocate the available Project  
18 Water amount to Lemoore Naval Air Station in ac-  
19 cordance with the allocation steps for municipal and  
20 industrial water service contractors under the Cen-  
21 tral Valley Project Municipal and Industrial Water  
22 Shortage Policy (as in effect on the effective date of  
23 the repayment contract). For purposes of deter-  
24 mining “historical use” under the policy, past water  
25 use for irrigation needs by the Lemoore Naval Air

1 Station under the contract authorized by this section  
2 or such use previous to the contract may be consid-  
3 ered.

4 **SEC. 7. REPAYMENT OBLIGATIONS.**

5 (a) SUSPENSION OF CAPITAL OBLIGATION.—  
6 Westlands Water District's capital repayment obligation  
7 and payments under its water service contracts and the  
8 April 1, 1965, repayment contract between the United  
9 States and Westlands Water District (contract numbered  
10 14-06-200-2020-A) as further defined in subsection (b),  
11 is suspended until the execution of the repayment con-  
12 tract. Upon execution of that repayment contract,  
13 Westlands Water District shall receive a credit against fu-  
14 ture operation and maintenance costs payable to the  
15 United States in the amount of the capital costs under  
16 the water service contracts and the 1965 Repayment Con-  
17 tract paid by Westlands Water District between the date  
18 of the Westlands Agreement and the date of the enact-  
19 ment of this Act. Costs incurred by the United States for  
20 revaluating, planning, or providing drainage service to  
21 Westlands Water District shall be non-reimbursable, as  
22 set forth in paragraph (9)(C)(iv) of the Westlands Agree-  
23 ment.

24 (b) RELIEF OF CAPITAL REPAYMENT OBLIGA-  
25 TIONS.—Upon the date of execution of the repayment con-

1 tract, and as set forth in the Westlands Agreement, the  
2 following shall take effect:

3 (1) IN GENERAL.—Westlands Water District  
4 shall be relieved of—

5 (A) its capital repayment obligations under  
6 the June 5, 1963, water service contract be-  
7 tween the United States and Westlands Water  
8 District (contract number 14–06–200–495–A)  
9 providing for water service, or any renewals  
10 thereof, and any water service contracts as-  
11 signed to Westlands Water District, Westlands  
12 Distribution District No. 1, and Westlands Dis-  
13 tribution District No. 2 existing as of the date  
14 of the execution of the Westlands Agreement;  
15 and

16 (B) any remaining repayment obligation  
17 under the April 1, 1965, repayment contract  
18 between the United States and Westlands  
19 Water District (contract numbered 14–06–200–  
20 2020–A).

21 (2) LIMITATION ON RELIEF.—Repayment relief  
22 granted in paragraph (1) shall not extend to—

23 (A) Westlands Water District’s operation  
24 and maintenance obligations, whether payable

1 to the United States or to an Operating Non-  
2 Federal Entity;

3 (B) construction costs or other capitalized  
4 costs not yet allocated to or incurred by  
5 Westlands Water District as of the date of the  
6 Westlands Agreement, including costs attrib-  
7 utable to the Folsom Safety of Dams modifica-  
8 tions, the B.F. Sisk corrective action study, or  
9 any Safety of Dams; or

10 (C) the repayment of future capital costs  
11 incurred after the date of execution of the  
12 Westlands Agreement.

13 (c) REPAYMENT OF COSTS.—Central Valley Project  
14 construction costs or other capitalized costs allocated to  
15 Westlands Water District after the date of the Westlands  
16 Agreement, and properly assignable to Westlands Water  
17 District, shall be repaid in not more than 5 years after  
18 notification of the allocation of such amount of less than  
19 \$5,000,000. If such amount is \$5,000,000 or greater, such  
20 cost shall be repaid as provided by applicable Reclamation  
21 law. Any additional costs that may have been assigned to  
22 Westlands Water District pursuant to paragraph  
23 (9)(C)(iv) of the Westlands Agreement related to the Cen-  
24 tral Valley Project final cost allocation shall be non-reim-  
25 bursable.

1 (d) APPLICABILITY OF CERTAIN PROVISIONS.—

2 (1) RECLAMATION REFORM ACT.—Upon dis-  
3 charge of the capital repayment obligation as pro-  
4 vided in subsection (b), the provisions of section  
5 213(a) and (b) of the Reclamation Reform Act of  
6 1982 (96 Stat. 1269) shall be deemed to apply to  
7 lands in Westlands Water District, and the owner-  
8 ship and full cost pricing limitations in any provision  
9 of Federal reclamation law shall not apply to lands  
10 in the District notwithstanding the subsequent allo-  
11 cation of construction costs or other capitalized costs  
12 to the District. These exemptions shall be carried  
13 out in accordance with the process set forth in the  
14 Westlands Agreement.

15 (2) OTHER PROVISIONS.—Nothing in this Act is  
16 intended to relieve the San Luis Unit Contractors of  
17 any other obligations under Reclamation Law in-  
18 cluding Restoration Fund charges pursuant to sec-  
19 tion 3407(d) of Public Law 102–575.

20 **SEC. 8. TRANSFER OF TITLE TO CERTAIN FACILITIES.**

21 (a) IN GENERAL.—Upon the execution of the repay-  
22 ment contract, or as soon thereafter as practicable, the  
23 Secretary shall transfer to Westlands Water District title  
24 to the following:

1           (1) San Luis Canal System, excluding the main  
2           canal that is integrated with the California Aque-  
3           duct. These appurtenant features include—

4                 (A) internal water distribution system  
5                 within Westlands, including approximately  
6                 1,045 miles of buried pipeline;

7                 (B) pumping plants within Westlands, in-  
8                 cluding—

9                         (i) San Luis Canal Left and Right  
10                        Bank pumping plants;

11                       (ii) Pumping Plants P1 through P38  
12                        located at the head end of the gravity  
13                        laterals to supply the head required for the  
14                        “P” laterals;

15                       (iii) Pumping Plants, tanks, res-  
16                        ervoirs, relift pumping plants to serve  
17                        lands west of the San Luis Canal; and

18                       (iv) Pumping Plant 7.05 off Lateral  
19                        7; and

20                 (C) related structures, appurtenances,  
21                 pumping plants, pumps, motors, meters, valves,  
22                 tanks, transformers, and electrical equipment  
23                 as specifically identified through the title trans-  
24                 fer process of federally owned facilities, equip-  
25                 ment, and real property.

1           (2) Mendota Pool diversion facilities operated  
2       by Westlands Water District System, including the  
3       following:

4           (A) Inlet Canal from the Fresno Slough.

5           (B) Pumping plants, 6-1, 6-2, 7-1, 7-2.

6           (C) Related structures, appurtenances,  
7       pumps, motors, meters, valves, tanks, trans-  
8       formers, and electrical equipment as specifically  
9       identified through the title transfer process of  
10      federally owned facilities, equipment, and real  
11      property.

12          (3) Pleasant Valley System, including the fol-  
13      lowing:

14          (A) Intake canal and pipeline.

15          (B) Pleasant Valley Pumping Plant.

16          (C) Coalinga Canal, including related  
17      check structures, turnouts, and headworks.

18          (D) Pleasant Valley distribution system  
19      and pumping plants along the Coalinga Canal.

20          (E) Related structures, appurtenances,  
21      pumps, motors, meters, valves, tanks, trans-  
22      formers, and electrical equipment as specifically  
23      identified through the title transfer process of  
24      federally owned facilities, equipment, and real  
25      property.



1           (4) Drainage collection system, including the  
2 following:

3           (A) Carrier and collector pipelines, sumps,  
4 and sump pumps.

5           (B) San Luis Drain from Sta 6678+45 to  
6 Sta 8520+22.87. (Crossing with DMC to La-  
7 guna Ave crossing.)

8           (C) Related structures, appurtenances,  
9 pumps, motors, meters, valves, tanks, trans-  
10 formers, and electrical equipment as specifically  
11 identified through the title transfer process of  
12 federally owned facilities, equipment, and real  
13 property.

14          (5) Tranquillity Field Office, including the fol-  
15 lowing:

16           (A) Buildings at 32650 West Adams Ave-  
17 nue, Tranquillity, CA 93668.

18           (B) All related fixtures and furnishings as  
19 specifically identified through the title transfer  
20 process of federally owned facilities, equipment,  
21 and real property.

22          (6) Huron field office, including the following:

23           (A) Buildings at 32450 South Lassen Ave-  
24 nue, Huron, CA 93234.

1 (B) All related fixtures and furnishings as  
2 specifically identified through the title transfer  
3 process of federally owned facilities, equipment,  
4 and real property.

5 (7) All real property interests held by the  
6 United States in lands underlying or otherwise asso-  
7 ciated with the facilities and equipment listed in this  
8 subsection (a), including all fee title, easements, and  
9 rights of way.

10 (b) PAYMENT OF COSTS.—Except as specifically pro-  
11 vided in this Act, any transfer of title to the Pleasant Val-  
12 ley Pumping Plant, the Coalinga Canal, and any associ-  
13 ated facilities shall not relieve any other Project Water  
14 service or repayment contractor of the requirement to pay  
15 any allocated costs associated with those conveyance or  
16 pumping facilities that are properly allocated to those con-  
17 tractors under existing law and Project ratesetting poli-  
18 cies.

19 (c) LIABILITY ON TRANSFER OF TITLE.—Upon  
20 transfer of title to any facilities pursuant to subsection  
21 (a), Westlands Water District shall, as a condition to such  
22 transfer, formally agree as of the date of transfer to—  
23 (1) hold the United States harmless and indem-  
24 nify the United States for any and all claims, cost,  
25 damages, and judgments of any kind arising out of

1 any act, omission, or occurrence relating to the  
2 transferred facilities, except for such claims, costs,  
3 damages arising from acts of negligence committed  
4 by the United States or by its employees, agents, or  
5 contractors, prior to the date of title transfer, for  
6 which the United States is found liable under the  
7 Federal Tort Claims Act; and

8 (2) assume full responsibility for correcting and  
9 financing any repairs or deficiencies that may exist  
10 at the time of or following title transfer.

11 (d) COMPLIANCE.—The Secretary and Westlands  
12 Water District shall comply with all applicable require-  
13 ments under Federal and California law before title to a  
14 facility is transferred pursuant to this section.

15 **SEC. 9. COMPLIANCE WITH APPLICABLE LAW.**

16 In implementing the measures authorized by this Act,  
17 the Secretary shall comply with all applicable Federal  
18 laws, rules, and regulations, including the National Envi-  
19 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
20 and the Endangered Species Act of 1973 (16 U.S.C. 1531  
21 et seq.), as necessary.

1   **SEC. 10. NO WATER SUPPLY OR FINANCIAL IMPACTS ON**  
2                   **OTHER CENTRAL VALLEY PROJECT CON-**  
3                   **TRACTORS.**

4       Implementation of this Act and the Agreements au-  
5   thorized thereunder shall not—

6           (1) result in the involuntary reduction in the  
7       contract water allocation to any Central Valley  
8       Project long-term water service, repayment, settle-  
9       ment, exchange, or refuge contractor, including con-  
10      tractors in the Friant Division of the Central Valley  
11      Project;

12          (2) modify, amend or affect any of the rights  
13      and obligations of the parties to any Central Valley  
14      Project long-term water service, repayment, settle-  
15      ment, exchange, or refuge contract, including con-  
16      tracts in the Friant Division of the Central Valley  
17      Project; or

18          (3) alter the repayment obligation of any long-  
19      term water service, repayment, or settlement con-  
20      tractor receiving water or power from the Central  
21      Valley Project, or shift any costs to other such con-  
22      tractors that would otherwise have been properly as-  
23      signable to San Luis Unit Contractors under this  
24      Act, including operations and maintenance costs,  
25      construction costs, or other capitalized costs allo-

1 cated to San Luis Unit Contractors after the date  
2 of this Act.

3 (4) Impair the ability of the United States to  
4 implement Paragraph 16 (The Water Management  
5 Goal) of the Stipulation of Settlement entered by the  
6 parties to *Natural Resources Defense Council, et al.*  
7 *v. Rogers, et al.*, (Case NO CIV S-88-1658 (LKK/  
8 GGH) E.D.Cal.) dated September 13, 2006, as au-  
9 thorized to be implemented by title X of Public Law  
10 111-11.

11 (5) Diminish, impair, or otherwise affect in any  
12 manner any priorities for the allocation, delivery, or  
13 use of water under applicable law, including any  
14 purposes of use and priorities established by sections  
15 3402 and 3406 of the Central Valley Project Im-  
16 provement Act (Public Law 102-575; 106 Stat.  
17 4706).

18 **SEC. 11. RESTORATION FUND PAYMENTS BY WESTLANDS**  
19 **WATER DISTRICT.**

20 For the purpose of avoiding a shift of Central Valley  
21 Project Restoration Fund payments from Westlands  
22 Water District to Central Valley Project preference power  
23 contractors, for any year in which the allocation of water  
24 for south-of-Delta Central Valley Project long-term water  
25 service contractors or repayment contractors is greater

1 than 75 percent, the Secretary shall calculate for  
2 Westlands Water District a per acre foot Restoration  
3 Fund payment based on a projection that Westlands  
4 Water District would take delivery of the allocation made  
5 to south-of-Delta Central Valley Project long-term water  
6 service contractors or repayment contractors.

**From:** Rojewski, Cole

**Sent:** Monday, January 11, 2016 1:22 PM

**To:** 'Smith, Ryan A.'; jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L.

**Subject:** RE: Most Updated Version of Settlement Bill

From leg council? – What's best?

I can put in "except . . .", "if", or "but". Which do you mean? See:

### **"Provided that", "providing", "provided however"**

*Provided that*, *providing*, and *provided however* pop up in so many documents that they must be really precise legal words having well understood meanings. Right?

Wrong. They are sloppy, antiquated, imprecise and sometimes ambiguous words. The origins of *provided that* go back to the 13th century when the words *provided that* meant it is *provided* that this is our agreement or it is *provided that* this is the law. Nowadays, the words are used variously to mean

- an exception
- a condition, or
- just another provision of the legal document.

Here is an example of two different uses of *providing* in one clause:

An employee . . . shall, upon her written request providing at least 2 weeks advance notice, be granted maternity leave . . . provided however that if . . . her ability to carry out her normal work assignments becomes limited . . .

The first *providing* is used as a condition on the employee obtaining maternity leave. The *provided however* looks like it is an exception. In fact it is quite a separate matter because it permits the employer, unilaterally, to place the employee on maternity leave in certain circumstances – it has nothing to do with the employee's right to maternity leave. The first 3 lines could be rewritten along these lines:

. . . the Employer must grant a pregnant employee maternity leave if she gives the Employer at least 2 weeks written notice . . .

Here is another *provided that* example

Provided that the efficiency of . . . shall not in any way be disrupted . . . time off work without pay may be granted . . . for the following purposes . . .

This *Provided that* is used as a condition. It can be replaced with "If".

If a document does not make clear which meaning a *provided that*, *provided however*, or *providing* has, a dispute can lead to litigation.

The guiding rule is: *Don't use "provided that" or "provided however" - use instead "except . . .", "if", or "but".*

---

**From:** Smith, Ryan A. [mailto:RSmith@BHFS.com]  
**Sent:** Monday, January 11, 2016 11:31 AM  
**To:** Rojewski, Cole; jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L.  
**Cc:** Dunklin, Kristina  
**Subject:** RE: Most Updated Version of Settlement Bill

Cole,

With one minor exception the bill draft looks good. Our proposed change is below:

**SEC. 5. DRAINAGE IMPLEMENTATION.**

The Westlands Water District shall assume all legal responsibility for the management of drainage water within its boundaries in accordance with Federal and California law, and in accordance with the Westlands Agreement; **provided that** ~~and~~ Westlands Water District shall not discharge drain water outside of its boundaries.

Thanks again for all your hard work on the legislation.

Please let me know if you have any questions.

Thanks,

Ryan

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]  
**Sent:** Friday, January 08, 2016 2:13 PM  
**To:** [jamaral@westlandswater.org](mailto:jamaral@westlandswater.org); [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org); Bernhardt, David L.; Smith, Ryan A.  
**Cc:** Dunklin, Kristina  
**Subject:** Most Updated Version of Settlement Bill

Attached

Cole Rojewski  
Chief of Staff  
Rep. David G. Valadao (CA-21)

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**From:** Smith, Ryan A.

**Sent:** Monday, January 11, 2016 1:49 PM

**To:** Rojewski, Cole; jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L.

**Subject:** RE: Most Updated Version of Settlement Bill

Cole:

This last sentence of section 5 is not really an exception to the drainage obligation. It is more of a clarification. As a result, we struck the original Section 5(b) as drafted by legislative counsel because the heading was entitled "Exception". Therefore, I would write it as follows, adding back in subsection (b), but deleting the title "Exception":

**SEC. 5. DRAINAGE IMPLEMENTATION.**

- (a) In General: The Westlands Water District shall assume all legal responsibility for the management of drainage water within its boundaries in accordance with Federal and California law, and in accordance with the Westlands Agreement; and
- (b) **Drain Water:** Westlands Water District shall not discharge drain water outside of its boundaries.

Let me know if you have any questions.

Ryan Smith  
Shareholder, Brownstein Hyatt Farber Schreck  
1350 I Street, NW, Suite 510  
Washington, DC 20005  
(202) [REDACTED] - [REDACTED]

---

**From:** [Rojewski, Cole](#)

**Sent:** Monday, January 11, 2016 3:22 PM

**To:** [Smith, Ryan A.](#); [jamaral@westlandswater.org](#); [tbirmingham@westlandswater.org](#); [Bernhardt, David L.](#)

**Subject:** RE: Most Updated Version of Settlement Bill

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**"Provided that", "providing", "provided however"**

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---

**From:** Smith, Ryan A. [mailto:RSmith@BHFS.com]

**Sent:** Monday, January 11, 2016 11:31 AM

**To:** Rojewski, Cole; jamaral@westlandswater.org; tbirmingham@westlandswater.org; Bernhardt, David L.

**Cc:** Dunklin, Kristina

**Subject:** RE: Most Updated Version of Settlement Bill

Cole,

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**SEC. 5. DRAINAGE IMPLEMENTATION.**

The Westlands Water District shall assume all legal responsibility for the management of drainage water within its boundaries in accordance with Federal

and California law, and in accordance with the Westlands Agreement; **provided that** and Westlands Water District shall not discharge drain water outside of its boundaries.

Thanks again for all your hard work on the legislation.

Please let me know if you have any questions.

Thanks,

Ryan

---

**From:** Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
**Sent:** Friday, January 08, 2016 2:13 PM  
**To:** [jamaral@westlandswater.org](mailto:jamaral@westlandswater.org); [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org); Bernhardt, David L.; Smith, Ryan A.  
**Cc:** Dunklin, Kristina  
**Subject:** Most Updated Version of Settlement Bill

Attached

Cole Rojewski  
Chief of Staff  
Rep. David G. Valadao (CA-21)

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**From:** Smith, Ryan A.  
**Sent:** Tuesday, January 12, 2016 6:58 AM  
**To:** cole.rojewski@mail.house.gov  
**CC:** Bernhardt, David L.; jamaral@westlandswater.org  
**Subject:** Draft Release  
**Attachments:** DRAFT DV drainage release.docx

Cole,

I have attached a draft press release for your office to consider.

Please let us know if you have any questions.

Thanks,

Ryan

**STATEMENT OF CONFIDENTIALITY & DISCLAIMER:** The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

## SAN LUIS UNIT DRAINAGE RESOLUTION ACT

Today, U.S. Congressman David G. Valadao (R-CA) and \_\_\_\_\_ introduced the *San Luis Unit Drainage Resolution Act*, H.R. \_\_\_\_\_, in the United States House of Representatives. This bipartisan legislation would authorize a settlement of a long-standing dispute between the United States and the Westlands Water District (“Westlands”) concerning the management of drainage water within Westlands’ service area in the San Luis Unit of the Central Valley Project (CVP) in California. In doing so, the legislation will save the American taxpayers billions of dollars.

Under H.R. \_\_\_\_\_, the United States will be relieved of potential liability of \$3.5 billion for the statutory obligation to manage drainage water. Westlands will retire no less than 100,000 acres of farmland and develop productive uses for the land, while continuing to manage all drain water within its boundaries. In addition, Westlands will dismiss its drainage related claims against the U.S. and indemnify the U.S. for any damages for landowner claims arising out of pending takings litigation against the federal government. According to the U.S. Bureau of Reclamation, the potential liability of the United States for these claims could exceed more than \$2 billion. In return, the U.S. would relieve Westlands of its existing capital repayment obligations under its water service contract with the U.S., which is valued at approximately \$375 million.

Importantly, no other CVP contractor will see their water supply jeopardized by the enactment of this legislation.

### *Valadao Quote:*

H.R. \_\_\_\_\_ is necessary to approve and authorize the underlying drainage settlement agreement between Westlands and the U.S. Department of Justice, which both parties executed in September 2015. The legislation has undergone several years of public review at the U.S. Department of Justice and the Department of Interior. The legislation will allow the Bureau of Reclamation to pursue other water-policy initiatives in drought-stricken California.

The legislative text of H.R. \_\_\_\_\_ can be found here:

A summary of H.R. \_\_\_\_\_ can be found here:

**From:** Rojewski, Cole  
**Sent:** Tuesday, January 12, 2016 8:50 AM  
**To:** 'Smith, Ryan A.'  
**CC:** Bernhardt, David L.; jamaral@westlandswater.org  
**Subject:** RE: Draft Release

Bill will be dropped around 1pm est. Do we want to do a call beforehand.

---

**From:** Smith, Ryan A. [mailto:RSmith@BHFS.com]  
**Sent:** Tuesday, January 12, 2016 8:58 AM  
**To:** Rojewski, Cole  
**Cc:** Bernhardt, David L.; jamaral@westlandswater.org  
**Subject:** Draft Release

Cole,

I have attached a draft press release for your office to consider.

Please let us know if you have any questions.

Thanks,

Ryan

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**From:** Rojewski, Cole

**Sent:** Tuesday, January 12, 2016 11:05 AM

**To:** tbirmingham@westlandswater.org; jamaral@westlandswater.org; Smith, Ryan A. (RSmith@BHFS.com); Bernhardt, David L. (DBernhardt@BHFS.com)

**Subject:** EMBARGOED: Our Press Release for this afternoon.

Thanks for your help.

### **Valadao Introduces Legislation to Resolve Westlands Drainage Dispute**

Washington - Today, U.S. Congressman David G. Valadao (CA-21) introduced the *San Luis Unit Drainage Resolution Act* in the United States House of Representatives. This legislation would authorize a settlement of a long-standing dispute between the United States and the Westlands Water District concerning the management of drainage water within Westlands' service area in the San Luis Unit of the Central Valley Project (CVP) in California. In doing so, the legislation will save the American taxpayers billions of dollars.

Under the legislation, the United States will be relieved of potential liability of \$3.5 billion for the statutory obligation to manage drainage water. The bill includes concessions made by both the Federal Government and Westlands Water District to resolve the dispute. Westlands will dismiss its drainage related claims against the U.S. and indemnify the U.S. for any damages for landowner claims arising out of pending takings litigation against the federal government. According to the U.S. Bureau of Reclamation, the potential liability of the United States for these claims could exceed more than \$2 billion.

Importantly, no other CVP contractor will see their water supply jeopardized by the enactment of this legislation.

Congressman David Valadao stated, **"This legislation is necessary to approve and authorize the drainage settlement agreed to by both Westlands and the U.S. Department of Justice (DOJ) this past year."** He continued, **"Furthermore, enactment of this legislation has the potential to save taxpayers billions of dollars. Ensuring taxpayer dollars go towards meaningful projects, such as increased water storage rather than fighting unnecessary litigation, is the responsible and most efficient use of taxpayer dollars."**

Specifically, the legislation will:

- Settle the above litigation and relieve the U.S. of its multi-billion dollar statutory and court-ordered drainage obligation
- Require Westlands to manage drainage water within its boundaries, in accordance with the federal and California law, and provide the Department of Interior the right to cease water deliveries to Westlands if it fails to do so
- Require Westlands to indemnify the U.S. for any damages and pay compensation for landowner claims arising out of the Etchegoinberry litigation

- Relieve Westlands of its existing approximate \$375 million capital repayment obligations under its water service contract with the United States
- Require Westlands to permanently retire 100,000 acres of land within its boundaries
- Authorize the Secretary of the Interior to convert Westlands' existing water service contract entered into under section 9(e) of the 1939 to a repayment contract under section 9(d) of the same act
- Cap Westlands contract deliveries at 75% of its CVP contract amount

*Congressman David G. Valadao represents the 21st Congressional District, which includes Kings County and portions of Fresno, Tulare, and Kern Counties.*

###

Cole Rojewski  
Chief of Staff  
Rep. David G. Valadao (CA-21)



**From:** Bernhardt, David L.  
**Sent:** Friday, January 15, 2016 9:56 AM  
**To:** Johnny Amaral  
**Subject:** Monday's call

Monday is MLK day. I'm not sure you're on duty or off, but you might want to send an email out either cancelling or confirming Monday's call.

David Bernhardt

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**From:** Johnny Amaral  
**Sent:** Friday, January 15, 2016 9:56 AM  
**To:** Bernhardt, David L.  
**Subject:** Re: Monday's call

Good catch.

Best,

Johnny Amaral

> On Jan 15, 2016, at 8:55 AM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

>

> Monday is MLK day. I'm not sure you're on duty or off, but you might want to send an email out either cancelling or confirming Monday's call.

>

> David Bernhardt

>

>

>

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**From:** Johnny Amaral

**Sent:** Friday, January 15, 2016 10:35 AM

**To:** David Bernhardt; Dennis Cardoza; Dennis Cardoza; 'Ryan A. Smith'; Catherine Karen; Ed Manning; Carolyn Jensen; Mike Burns

**Subject:** Monday morning call CANCELLED

To observe the Martin Luther King, Jr. Day Holiday.

For your motivation, below are my three FAVORITE MLK quotes.

“In the end, we will remember not the words of our enemies, but the silence of our friends” – MLK

“And there comes a time when one must take a position that is neither safe, nor politic, nor popular, but he must do it because conscience tells him it is right” – MLK

“The hottest place in hell is reserved for those who remain neutral in times of great conflict” - MLK

**From:** Rojewski, Cole  
**Sent:** Thursday, January 21, 2016 12:55 PM  
**To:** Tom Birmingham; Johnny Amaral; Bernhardt, David L.  
**CC:** Dunklin, Kristina  
**Subject:** Thoughts on DiFi Leg?

Wanted to get your initial reactions?

Cole Rojewski  
Chief of Staff  
Rep. David G. Valadao (CA-21)

**From:** Johnny Amaral  
**Sent:** Thursday, January 21, 2016 1:29 PM  
**To:** Rojewski, Cole  
**CC:** Tom Birmingham; Bernhardt, David L.; Dunklin, Kristina  
**Subject:** Re: Thoughts on DiFi Leg?

We havent seen it yet but Tom is attending the meeting in SF tomorrow. Once were able to fully analyze it, one of us will circle back with you.

Best,

Johnny Amaral

On Jan 21, 2016, at 11:55 AM, Rojewski, Cole <[Cole.Rojewski@mail.house.gov](mailto:Cole.Rojewski@mail.house.gov)> wrote:

Wanted to get your initial reactions?

Cole Rojewski  
Chief of Staff  
Rep. David G. Valadao (CA-21)

**From:** Rojewski, Cole

**Sent:** Thursday, January 21, 2016 1:33 PM

**To:** Tom Birmingham; David L. Bernhardt; Johnny Amaral

**CC:** Dunklin, Kristina

**Subject:** Fwd: Sen. Feinstein's drought bill discussion draft

**Attachments:** Drought Bill Discussion Draft, 1.21.16.pdf; ATT00001.htm; Drought bill discussion draft -- eight water supply benefits (1.21.16).pdf; ATT00002.htm; Drought bill discussion draft, summary (1.21.16).pdf; ATT00003.htm

Please find it attached. Let me know your thoughts.

Begin forwarded message:

## DISCUSSION DRAFT

Title: To provide short-term water supplies to drought-stricken California and provide for long-term investments in drought resiliency throughout the Western United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Purposes.

Sec.3.Findings.

Sec.4.Definitions.

### TITLE I—LONG-TERM IMPROVEMENTS FOR WESTERN STATES SUBJECT TO DROUGHT

#### Subtitle A—Assistance for Drought-stricken Communities

Sec.101. WaterSMART reauthorization and assistance for drought-stricken communities and.

Sec.102.Utilizing State revolving funds for areas with inadequate water supplies.

#### Subtitle B—Storage Provisions

Sec.111.Definitions.

Sec.112.Water storage project construction.

Sec.113.Reservoir operation improvement.

Sec.114.Findings.

Sec.115.Studies.

Sec.116.Losses caused by construction and operation of water storage projects.

## **DISCUSSION DRAFT**

### **Subtitle C—Desalination, Water Reuse and Recycling, and Conservation**

Sec.121.Water recycling and desalination projects.

Sec.122.Reauthorization of Water Desalination Act.

Sec.123.New water recycling and reuse projects.

Sec.124.Promoting water efficiency with WaterSense.

### **Subtitle D—Reclamation Infrastructure Finance and Innovation**

Sec.131.Purposes.

Sec.132.Definitions.

Sec.133.Authority to provide assistance.

Sec.134.Applications.

Sec.135.Eligibility for assistance.

Sec.136.Determination of eligibility and project selection.

Sec.137.Secured loans.

Sec.138.Program administration.

Sec.139.State and local permits.

Sec.140.Regulations.

Sec.141.Funding.

## **TITLE II—LISTED SPECIES AND WILDLIFE**

Sec.201.Actions to benefit endangered fish populations.

Sec.202.Actions to benefit refuges.

Sec.203.Non-Federal program to protect native anadromous fish in Stanislaus River.

Sec.204.Pilot projects to implement Calfed invasive species program.

## **TITLE III—CALIFORNIA EMERGENCY DROUGHT RELIEF AND OPERATIONAL FLEXIBILITY**

Sec.301.Taking into account increased real-time monitoring and updated science.

Sec.302.Emergency operations.



## DISCUSSION DRAFT

1 Sec.303.Temporary operational flexibility to capture peak flows from  
2 winter storms.

3 Sec.304.Emergency environmental reviews.

4 Sec.305.Level of detail required for analysis.

### 5 TITLE IV—WATER RIGHTS

6 Sec.401.Offset for State Water Project.

7 Sec.402.Area of origin and water rights protections.

8 Sec.403.No redirected adverse impacts.

9 Sec.404.Allocations for Sacramento Valley water service contractors.

### 10 TITLE V—MISCELLANEOUS PROVISIONS

11 Sec.501.Authorized service area.

12 Sec.502.Oversight over and public input into Restoration Fund activities.

13 Sec.503.Basin studies.

14 Sec.504.Technical and modeling assistance.

15 Sec.505.Report on results of water usage.

16 Sec.506.Additional storage at New Melones.

17 Sec.507.Contracting authorities.

18 Sec.508.Single annual report.

### 19 TITLE VI—OFFSETS

20 Sec.601.Deauthorization of inactive projects.

21 Sec.602.Accelerated revenue, repayment, and surface water storage  
22 enhancement.

### 23 TITLE VII—DURATION AND EFFECT ON 24 EXISTING OBLIGATIONS

25 Sec.701.Savings clause.

26 Sec.702.Termination.

### 27 SEC. 2. PURPOSES.

28 The purposes of this Act are—

29 (1) to help communities most at risk of running out of clean water;

30 (2) to provide funding and support for long-term solutions  
31 including water storage, desalination and recycling;

## DISCUSSION DRAFT

- 1 (3) to protect threatened and endangered species; and
- 2 (4) to facilitate the movement of water to communities most in
- 3 need while adhering to all environmental laws.

### 4 SEC. 3. FINDINGS.

5 Congress finds that—

- 6 (1) California is experiencing one of the most severe droughts on
- 7 record, with the snowpack at the lowest levels in 500 years;
- 8 (2) Governor Jerry Brown declared a drought state of emergency
- 9 on January 17, 2014, and subsequently imposed strict water
- 10 reductions on communities throughout the State;
- 11 (3) the drought constitutes a serious emergency that poses
- 12 immediate and severe risks to—
  - 13 (A) human health and safety;
  - 14 (B) economic security; and
  - 15 (C) the environment;
- 16 (4) wells that provide households with clean water are drying up as
- 17 the State entered its fourth consecutive summer of drought, with
- 18 approximately 2,591 wells statewide identified as critical or dry,
- 19 affecting an estimated 12,955 residents, many in the Central Valley;
- 20 (5) rural and disadvantaged communities have been hardest hit,
- 21 placing great strain on drinking water supplies in the Southern San
- 22 Joaquin Valley—
  - 23 (A) 69 communities in Southern San Joaquin Valley have
  - 24 reported significant water supply and quality issues; and
  - 25 (B) East Porterville is particularly hard hit, with 40 percent, or
  - 26 3,000, of its residents, without running water;
  - 27 (6) the drought has resulted in many lost jobs including more than
  - 28 21,000 seasonal and part-time agricultural jobs—resulting in a 10.9
  - 29 percent unemployment rate in the Central Valley, double the
  - 30 statewide unemployment rate of 5.7 percent, as of December 15,
  - 31 2015;
  - 32 (7) thousands of families have been affected, placing ever greater
  - 33 demands on food banks and other relief organizations, and as of
  - 34 December 21, 2015—
    - 35 (A) the California Department of Social Services Drought
    - 36 Food Assistance Program has provided more than 1,000,000
    - 37 boxes to food banks in affected communities with high levels of
    - 38 unemployment; and

## DISCUSSION DRAFT

(B) nearly 72 percent of the food distributions have occurred in the Tulare Basin counties of Fresno, Kern, Kings, and Tulare;

(8) 2015 statewide economic costs are estimated at \$2,700,000, including but not limited to—

(A) the loss of \$900,000,000 in crop revenue;

(B) the loss of \$350,000,000 in dairy and other livestock value; and

(C) an increase of \$590,000,000 in groundwater pumping costs;

(9) 1,032,508 acres in California's Central Valley were fallowed in 2015, a 626,512 acre increase from 2011;

(10) the drought is imperiling California's forests, which provide important ecological, economic, and cultural benefits to the State, and among the effects of the drought—

(A) loss of 50,000,000 large trees due to stress from lack of water;

(B) 88,000,000 trees, covering 26,000,000 acres of California forestland, experienced losses of canopy cover since 2011, threatening ecosystem destruction and loss of animal habitat; and

(C) 6,337 fires covering 307,598 acres occurred in 2015;

(11) fish continue to be threatened by the extended drought, compounding effects on two endangered species, further reducing river flows and increasing water temperatures—

(A) Delta smelt abundance is at a historic low, as evidenced by long-term monitoring surveys;

(B) the abundance of the last remaining population of wild Sacramento River winter run Chinook salmon continue to decline, with mortality rates between 95 percent and 97 percent over the past 2 years;

(C) wildlife has also been affected, with water deliveries to wildlife refuges under the Central Valley Project Improvement Act reduced by 25 percent in the north-of-Delta region and 35 percent in the south-of-Delta region; and

(D) these reduced water supplies have contributed to a decline of the Pacific Flyway, a migratory route for waterfowl that spans from Alaska to South America—

(i) a reduction in water supplies has led to a significant decline in flooded rice fields, a vital habitat for migratory birds. Only one-third of the usual acres of rice fields were

## DISCUSSION DRAFT

1 flooded in 2015; and

2 (ii) the reduction of available habitat for migratory  
3 waterfowl contributed to an increased risk of disease in the  
4 remaining wetlands due to overcrowding of birds;

5 (12) subsidence in California is occurring at more than 12 inches  
6 per year, caused in part by an increase in groundwater pumping of  
7 more than 6,000,000 acre feet. Some areas in the Central Valley have  
8 sunk as much as 2 inches per month, and the damage from  
9 subsidence is wide-ranging—

10 (A) roads, bridges, building foundations, pipelines, and other  
11 infrastructure have been damaged;

12 (B) vital aquifers have been depleted;

13 (C) vital levees have sustained cracks and ruptures; and

14 (D) shallow aquifers have become vulnerable to  
15 contamination as surface water infiltrates through fissures in the  
16 soil;

17 (13) California homes, cities, wildlife, businesses and farming  
18 need more water than is available today, particularly in the San  
19 Joaquin Valley;

20 (14) Congress recognizes that providing more water to those who  
21 need it most will require science-based management of water  
22 supplies and fish and wildlife resources, including—

23 (A) alternative management strategies, such as removing  
24 nonnative species, enhancing habitat, monitoring fish movement  
25 and location in real-time, and improving water quality in the  
26 Delta, which could contribute significantly to protecting and  
27 recovering those endangered fish species, and at potentially  
28 lower costs to water supplies than solely focusing on restrictions  
29 on water exports; and

30 (B) updated science and improved monitoring tools that  
31 provide Federal and State agencies with better information about  
32 conditions and operations that may or may not lead to high  
33 salvage events that jeopardize fish populations; and

34 (15) given the dire effects outlined above and the potential for  
35 continued harm, this emergency requires—

36 (A) immediate and credible action that takes into account the  
37 complexity and importance of the water system to the State; and

38 (B) policies that do not position stakeholders against one  
39 another, which in the past has led to costly litigation that  
40 benefits no one and prevents any real solutions.

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### SEC. 4. DEFINITIONS.

In this Act:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

(2) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(3) COMMISSIONER.—The term “Commissioner” means the Commissioner of Reclamation.

(4) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh (as defined in section 12220 of the California Water Code and section 29101 of the California Public Resources Code (as in effect on the date of enactment of this Act)).

(5) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(6) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(7) LISTED FISH SPECIES.—The term “listed fish species” means—

(A) any natural origin steelhead, natural origin genetic spring run Chinook, or genetic winter run Chinook salmon (including any hatchery steelhead or salmon population within the evolutionary significant unit or a distinct population segment); and

(B) Delta smelt.

(8) MAXIMIZE.—The term “maximize”, with respect to fish and water supply benefits, means to use improved real-time information to achieve the dual goals of maximizing water exports to Central Valley Project and State Water Project contractors while increasing fish protections when needed, in accordance with—

(A) the salmonid biological opinion;

(B) the smelt biological opinion; and

(C) applicable law.

(9) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(10) OMR FLOW.—The term “OMR flow” means Old and Middle River flow of any given measurement, expressed in cubic feet per second, as described in—

## DISCUSSION DRAFT

1 (A) the smelt biological opinion; and

2 (B) the salmonid biological opinion.

3 (11) RECLAMATION STATE.—The term “Reclamation State” means  
4 any of the States of—

5 (A) Arizona;

6 (B) California;

7 (C) Colorado;

8 (D) Idaho;

9 (E) Kansas;

10 (F) Montana;

11 (G) Nebraska;

12 (H) Nevada;

13 (I) New Mexico;

14 (J) North Dakota;

15 (K) Oklahoma;

16 (L) Oregon;

17 (M) South Dakota;

18 (N) Texas;

19 (O) Utah;

20 (P) Washington; and

21 (Q) Wyoming.

22 (12) SALMONID BIOLOGICAL OPINION.—

23 (A) IN GENERAL.—The term “salmonid biological opinion”  
24 means the biological and conference opinion of the National  
25 Marine Fisheries Service dated June 4, 2009, regarding the long-  
26 term operation of the Central Valley Project and the State Water  
27 Project, and successor biological opinions.

28 (B) INCLUSIONS.—The term “salmonid biological opinion”  
29 includes the operative incidental take statement of the opinion  
30 described in subparagraph (A).

31 (13) SMELT BIOLOGICAL OPINION.—

32 (A) IN GENERAL.—The term “smelt biological opinion” means  
33 the biological opinion dated December 15, 2008, regarding the  
34 coordinated operation of the Central Valley Project and the State  
35 Water Project, and successor biological opinions.

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(B) INCLUSIONS.—The term “smelt biological opinion” includes the operative incidental take statement of the opinion described in subparagraph (A).

(14) STATE WATER PROJECT.—The term “State Water Project” means the water project described in chapter 5 of part 3 of division 6 of the California Water Code (sections 11550 et seq.) (as in effect on the date of enactment of this Act) and operated by the California Department of Water Resources.

### TITLE I—LONG-TERM IMPROVEMENTS FOR WESTERN STATES SUBJECT TO DROUGHT

#### Subtitle A—Assistance for Drought-stricken Communities

#### SEC. 101. WATERSMART REAUTHORIZATION AND ASSISTANCE FOR DROUGHT-STRICKEN COMMUNITIES

.

(a) Findings.—Congress finds that—

(1) across the United States, more than 90 percent of the community water systems serve populations of less than 10,000 individuals;

(2) the number of dry wells continues to increase as the State of California enters the fourth consecutive summer of drought, with approximately 2,591 wells statewide identified as critical or dry, which affects an estimated 12,955 residents, with 2,444 of the dry wells concentrated in the inland regions within the Central Valley;

(3) many areas of the State of California are disproportionately impacted by drought because the areas are heavily dependent or completely reliant on groundwater from basins that are in overdraft and in which the water table declines year after year or from basins that are contaminated; and

(4) those communities throughout the State of California have been impacted by the presence of naturally occurring arsenic in the groundwater among other contaminants, as a result of higher concentration of contaminants in the water.

(b) Amendment.—Section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) is amended—

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1 (1) by redesignating subsections (b) through (e) as subsections (d)  
2 through (f), respectively;

3 (2) by inserting after subsection (b) the following:

4 “(c) Water Storage, Integrated Regional Water Management,  
5 Reclamation, and Recycling Projects.—

6 “(1) IN GENERAL.—The Secretary of the Interior is authorized to  
7 enter into cost shared financial assistance and other long-term  
8 agreements with non-Federal participants to advance the planning,  
9 design, and construction of non-Federal permanent water storage and  
10 conveyance facilities, projects for the reclamation and reuse of  
11 municipal, industrial, domestic and agricultural wastewater, and  
12 naturally impaired ground and surface waters, groundwater recharge,  
13 and other water management improvement projects for which the  
14 Secretary of the Interior is authorized under this subtitle to assist an  
15 applicant in the planning, design, and construction.

16 “(2) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of the  
17 Interior may provide financial assistance under this subtitle to carry  
18 out projects within—

19 “(A) any Reclamation State, including—

20 “(i) Arizona;

21 “(ii) California;

22 “(iii) Colorado;

23 “(iv) Idaho;

24 “(v) Kansas;

25 “(vi) Montana;

26 “(vii) Nebraska;

27 “(viii) Nevada;

28 “(ix) New Mexico;

29 “(x) North Dakota;

30 “(xi) Oklahoma;

31 “(xii) Oregon;

32 “(xiii) South Dakota;

33 “(xiv) Texas;

34 “(xv) Utah;

35 “(xvi) Washington;

36 “(xvii) Wyoming; and



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1 “(B) the States of Alaska and Hawaii.

2 “(3) PRIORITY.—In providing financial assistance under this  
3 section, the Secretary of the Interior shall give priority to storage,  
4 conveyance, and water management improvement projects that—

5 “(A) ensure the efficient and beneficial use of water or reuse  
6 of recycled water;

7 “(B) use integrated and coordinated water management on a  
8 watershed or regional scale;

9 “(C) increase the availability of usable water supplies in a  
10 watershed or region to benefit individuals, the economy, and the  
11 environment and include adaptive measures needed to address  
12 climate change and future demands;

13 “(D) where practicable, provide flood control or recreation  
14 benefits and include the development of incremental  
15 hydroelectric power generation; and

16 “(E) generate environmental benefits, such as benefits to  
17 fisheries, wildlife and habitat, water quality, water-dependent  
18 ecological systems, and water supply benefits to agricultural and  
19 urban water users.

20 “(4) FEDERAL COST SHARE.—The Federal share of the cost of a  
21 project under this subsection shall be—

22 “(A) an amount equal to the lesser of—

23 “(i) 25 percent of total costs; and

24 “(ii) \$20,000,000 (adjusted for inflation); and

25 “(B) nonreimbursable.

26 “(5) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost  
27 of a project under this subsection may include in-kind contributions  
28 to the planning, design, and construction of the project.

29 “(6) TITLE; OPERATION AND MAINTENANCE COSTS.—The non-  
30 Federal entity entering into a financial assistance agreement under  
31 this subsection shall—

32 “(A) hold title in and to all facilities constructed under this  
33 subsection, and

34 “(B) be solely responsible for the costs of operating and  
35 maintaining those facilities.”; and

36 (3) in subsection (f) (as redesignated by paragraph (1)), by striking  
37 “\$350,000,000” and inserting “\$500,000,000”.

38 (c) Amendment.—Section 9508 of the Omnibus Public Land  
39 Management Act of 2009 (42 U.S.C. 10368) is amended—

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1 (1) by redesignating subsections (b) through (e) as subsections (c)  
2 through (f), respectively; and

3 (2) by inserting after subsection (a) the following:

4 “(b) Additional Assistance for Communities Without Access to  
5 Adequate Water.—

6 “(1) IN GENERAL.—To assist disadvantaged communities that have  
7 experienced a significant decline in quantity or quality of drinking  
8 water, and to obtain or maintain adequate quantities of water that  
9 meet the standards set by the Federal Water Pollution Control Act (33  
10 U.S.C. 1251 et seq.), the Secretary of the Interior is authorized to  
11 provide grants for communities—

12 “(A) that are unable to meet the primary water quality  
13 standards under that Act; or

14 “(B) the local private or public water supply of which has  
15 been lost or severely diminished due to drought conditions.

16 “(2) ELIGIBLE COMMUNITIES.—To be eligible to receive a grant  
17 under this subsection, a community shall carry out a project described  
18 in paragraph (3), the service area of which—

19 “(A) shall not be located in any city or town with a population  
20 of more than 60,000 residents; and

21 “(B) has a median household income of less than 100 percent  
22 of the nonmetropolitan median household income of the State.

23 “(3) ELIGIBLE PROJECTS.—Projects eligible for this program may  
24 be used for—

25 “(A) emergency water supplies;

26 “(B) point of use treatment and point of entry systems;

27 “(C) distributed treatment facilities;

28 “(D) construction of new water source facilities including  
29 wells and connections to existing systems;

30 “(E) water distribution facilities;

31 “(F) connection fees to existing systems;

32 “(G) assistance to households to connect to water facilities;  
33 and

34 “(H) any combination of activities described in subparagraphs  
35 (A) through (G).

36 “(4) PRIORITIZATION.—In determining priorities for funding  
37 projects, the Secretary of the Interior shall take into consideration—

38 “(A) where water outages—

## DISCUSSION DRAFT

- 1 “(i) are most serious; and  
2 “(ii) pose the greatest threat to public health and safety;  
3 and  
4 “(B) whether the applicant has the ability to qualify for  
5 alternative funding sources.  
6 “(5) MAXIMUM AMOUNT.—The amount of a grant provided under  
7 this section may be made up to 100 percent of costs, including—  
8 “(A) initial operation costs incurred for start-up and testing of  
9 project facilities;  
10 “(B) components to ensure such facilities and components are  
11 properly operational; and  
12 “(C) costs of operation or maintenance incurred subsequent to  
13 placing the facilities or components into service.”.

### 14 SEC. 102. UTILIZING STATE REVOLVING 15 FUNDS FOR AREAS WITH INADEQUATE 16 WATER SUPPLIES.

- 17 (a) In General.—For the 5-year period beginning on the date of  
18 enactment of this Act, in allocating amounts to California from the Clean  
19 Water State Revolving Fund established under title VI of the Federal  
20 Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the Drinking  
21 Water State Revolving Fund established under section 1452 of the Safe  
22 Drinking Water Act (42 U.S.C. 300j–12) for any project eligible to receive  
23 assistance under section 603 of the Federal Water Pollution Control Act  
24 (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42  
25 U.S.C. 300j–12(a)(2)), respectively, that the State of California determines  
26 will provide additional water supplies most expeditiously to areas that are  
27 at risk of having an inadequate supply of water for public health and safety  
28 purposes or to improve resiliency to drought, the Administrator of the  
29 Environmental Protection Agency shall—  
30 (1) require the State of California to review and prioritize funding;  
31 (2) make a finding on any request for a waiver received from the  
32 State of California by not later than 30 days after the date of  
33 conclusion of the informal public comment period pursuant to section  
34 436(c) of division G of Public Law 113–76 (128 Stat. 347); and  
35 (3) authorize, at the request of the State of California, 40-year  
36 financing for assistance under section 603(d)(2) of the Federal Water  
37 Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of  
38 the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)), as applicable.  
39 (b) Effect of Section.—Nothing in this section authorizes the

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Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any State other than California.

### Subtitle B—Storage Provisions

#### SEC. 111. DEFINITIONS.

In this subtitle:

(1) **FEDERALLY OWNED STORAGE PROJECT.**—The term “federally owned storage project” means any project involving a surface water storage facility in a Reclamation State—

(A) to which the United States holds title; and

(B) that was authorized to be constructed, operated, and maintained pursuant to the reclamation laws.

(2) **STATE-LED STORAGE PROJECT.**—The term “State-led storage project” means any project in a Reclamation State that—

(A) involves a groundwater or surface water storage facility constructed, operated, and maintained by any State, department of a State, subdivision of a State, or public agency organized pursuant to State law; and

(B) provides a benefit in meeting any obligation under Federal law (including regulations).

#### SEC. 112. WATER STORAGE PROJECT CONSTRUCTION.

(a) **Federally Owned Storage Projects.**—

(1) **AGREEMENTS.**—On the request of any State, any department, agency, or subdivision of a State, or any public agency organized pursuant to State law, the Secretary of the Interior may negotiate and enter into an agreement on behalf of the United States for the design, study, and construction or expansion of any federally owned storage project in accordance with this section.

(2) **FEDERAL COST SHARE.**—Subject to the requirements of this subsection, the Secretary of the Interior may participate in a federally owned storage project in an amount equal to not more than 50 percent of the total cost of the federally owned storage project.

(3) **COMMENCEMENT.**—The construction of a federally owned

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storage project that is the subject of an agreement under this subsection shall not commence until the Secretary of the Interior—

(A) determines that the proposed federally owned storage project is feasible in accordance with the reclamation laws;

(B) secures an agreement providing upfront funding as is necessary to pay the non-Federal share of the capital costs; and

(C) determines that, in return for the Federal cost-share investment in the federally owned storage project, at least a proportionate share of the project benefits are Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges.

(4) ENVIRONMENTAL LAWS.—In participating in a federally owned storage project under this subsection, the Secretary of the Interior shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) State-led Storage Projects.—

(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Interior may participate in a State-led storage project in an amount equal to not more than 25 percent of the total cost of the State-led storage project.

(2) REQUEST BY GOVERNOR.—Participation by the Secretary of the Interior in a State-led storage project under this subsection shall not occur unless—

(A) the participation has been requested by the Governor of the State in which the State-led storage project is located;

(B) the State or local sponsor determines, and the Secretary of the Interior concurs, that—

(i) the State-led storage project is technically and financially feasible;

(ii) sufficient non-Federal funding is available to complete the State-led storage project; and

(iii) the State-led storage project sponsors are financially solvent;

(C) the Secretary of the Interior determines that, in return for the Federal cost-share investment in the State-led storage project, at least a proportional share of the project benefits are the Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges; and

(D) the Secretary of the Interior submits to Congress a written

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1 notification of these determinations.

2 (3) ENVIRONMENTAL LAWS.—When participating in a State-led  
3 storage project under this subsection, the Secretary shall comply with  
4 all applicable environmental laws, including the National  
5 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

6 (4) INFORMATION.—When participating in a State-led storage  
7 project under this subsection, the Secretary of the Interior—

8 (A) may rely on reports prepared by the sponsor of the State-  
9 led storage project, including feasibility (or equivalent) studies,  
10 environmental analyses, and other pertinent reports and  
11 analyses; but

12 (B) shall retain responsibility for making the independent  
13 determinations described in paragraph (2).

14 (c) Authority to Provide Assistance.—The Secretary of the Interior may  
15 provide financial assistance under this subtitle to carry out projects within  
16 any Reclamation State, including—

- 17 (1) Arizona;
- 18 (2) California;
- 19 (3) Colorado;
- 20 (4) Idaho;
- 21 (5) Kansas;
- 22 (6) Montana;
- 23 (7) Nebraska;
- 24 (8) Nevada;
- 25 (9) New Mexico;
- 26 (10) North Dakota;
- 27 (11) Oklahoma;
- 28 (12) Oregon;
- 29 (13) South Dakota;
- 30 (14) Texas;
- 31 (15) Utah;
- 32 (16) Washington; and
- 33 (17) Wyoming.

34 (d) Rights to Use Capacity.—Subject to compliance with State water  
35 rights laws, the right to use the capacity of a federally owned storage  
36 project or State-led storage project for which the Secretary of the Interior

## DISCUSSION DRAFT

has entered into an agreement under this subsection shall be allocated in such manner as may be mutually agreed to by the Secretary of the Interior and each other party to the agreement.

(e) Compliance With California Water Bond.—

(1) IN GENERAL.—The provision of Federal funding for construction of a State-led storage project in the State of California shall be subject to the condition that the California Water Commission shall determine that the State-led storage project is consistent with the California Water Quality, Supply, and Infrastructure Improvement Act, approved by California voters on November 4, 2014.

(2) APPLICABILITY.—This subsection expires on the date on which State bond funds available under the Act referred to in paragraph (1) are fully expended.

(f) Partnership and Agreements.—The Secretary of the Interior, acting through the Commissioner, may partner or enter into an agreement regarding the water storage projects identified in section 103(d)(1) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108–361; 118 Stat. 1688) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(g) Authorization of Appropriations.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$600,000,000 to remain available until expended.

(2) ELIGIBILITY.—Only a federally owned storage project or State-led storage project that has been determined by the Secretary of the Interior to meet the eligibility criteria described in subsections (a) and (b) shall be eligible to receive funding under this section.

(h) Sunset.—This section shall apply only to federally owned storage projects and State-led storage projects that the Secretary of the Interior determines to be feasible before January 1, 2021.

## SEC. 113. RESERVOIR OPERATION IMPROVEMENT.

(a) Report.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the Committees on Appropriations and Environment and Public Works of the Senate and the Committees on Appropriations and Transportation and Infrastructure of the House of Representatives a report describing, with respect to any State under a gubernatorial drought declaration during water year 2015 or 2016, the following:



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1 (1) A list of Corps of Engineer projects and non-Federal projects  
2 operated for flood control in accordance with rules prescribed by the  
3 Secretary of the Army pursuant to section 7 of the Act of December  
4 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58  
5 Stat. 890, chapter 665)).

6 (2) The year during which the original water control manual was  
7 approved.

8 (3) The year during which any subsequent revisions to the water  
9 control plan and manual of the project are proposed to occur.

10 (4) A list of projects for which operational deviations for drought  
11 contingency have been requested, and the status of the request.

12 (5) The means by which water conservation and water quality  
13 improvements were addressed.

14 (6) A list of projects for which permanent or seasonal changes to  
15 storage allocations have been requested, and the status of the request.

16 (b) Project Identification.—Not later than 60 days after the date of  
17 completion of the report under subsection (a), the Secretary of the Army  
18 shall identify any projects described in the report that meet the following  
19 criteria:

20 (1) The project is located in a State in which a drought emergency  
21 has been declared or was in effect during the 1-year period preceding  
22 the date of final review by the Secretary.

23 (2) The water control manual and hydrometeorological information  
24 establishing the flood control rule curves of the project are considered  
25 out of date as a result of not being updated for a period of 20 years.

26 (3) A non-Federal sponsor of a Corps of Engineers project, or  
27 owner of a non-Federal project, as applicable, has submitted to the  
28 Secretary a written request to revise water operations manuals,  
29 including flood control rule curves, based on the use of improved  
30 weather forecasting or run-off forecasting methods, new watershed  
31 data, changes to project operations, or structural improvements.

32 (c) Pilot Projects.—

33 (1) IN GENERAL.—Not later than 1 year after the date of  
34 identification of projects under subsection (b), if any, the Secretary of  
35 the Army shall carry out not more than 15 pilot projects, including  
36 not less than 6 non-Federal projects (within the meaning of  
37 subsection (a)(1)), if any are identified under subsection (b), to  
38 implement revisions of water operations manuals, including flood  
39 control rule curves, based on the best available science, which may  
40 include—

41 (A) forecast-informed operations;



## DISCUSSION DRAFT

1 (B) new watershed data; and

2 (C) if applicable, in the case of non-Federal projects,  
3 structural improvements.

4 (2) CONSULTATION.—In implementing the pilot projects pursuant  
5 to this subsection, the Secretary of the Army shall consult with all  
6 affected interests, including—

7 (A) non-Federal entities responsible for operations and  
8 maintenance costs of a Corps of Engineers facility;

9 (B) affected water rights holders;

10 (C) individuals and entities with storage entitlements; and

11 (D) local agencies with flood control responsibilities  
12 downstream of a Corps of Engineers facility.

13 (d) Coordination With Non-federal Project Entities.—Before carrying  
14 out an activity under this section, if a project identified under subsection  
15 (b) is—

16 (1) a non-Federal project, the Secretary of the Army shall—

17 (A) consult with the non-Federal project owner; and

18 (B) enter into a cooperative agreement, memorandum of  
19 understanding, or other agreement with the non-Federal project  
20 owner describing the scope and goals of the activity and the  
21 coordination among the parties; or

22 (2) owned and operated by the Corps of Engineers, the Secretary of  
23 the Army shall—

24 (A) consult with each non-Federal entity (including a  
25 municipal water district, irrigation district, joint powers  
26 authority, or other local governmental entity) that currently—

27 (i) manages (in whole or in part) a Corps of Engineers  
28 dam or reservoir; or

29 (ii) is responsible for operations and maintenance costs;  
30 and

31 (B) enter into a cooperative agreement, memorandum of  
32 understanding, or other agreement with each the entity  
33 describing the scope and goals of the activity and the  
34 coordination among the parties.

35 (e) Consideration.—In designing and implementing a forecast-informed  
36 reservoir operations plan, the Secretary of the Army shall work closely  
37 with the National Oceanic and Atmospheric Administration and may  
38 consider—

39 (1) the relationship between ocean and atmospheric conditions,

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including the El Nino and La Nina cycles, and the potential for above-normal, normal, and below-normal rainfall for the coming water year, including consideration of atmospheric river forecasts;

(2) the precipitation and runoff index specific to the basin and watershed of the relevant dam or reservoir, including incorporating knowledge of hydrological and meteorological conditions that influence the timing and quantity of runoff;

(3) improved hydrologic forecasting for precipitation, snowpack, and soil moisture conditions;

(4) an adjustment of operational flood control rule curves to optimize water supply storage and reliability, hydropower production, environmental benefits for flows and temperature, and other authorized project benefits, without a reduction in flood safety; and

(5) proactive management in response to changes in forecasts.

(f) Funding.—

(1) DEFINITION OF OPERATIONAL DOCUMENT.—In this subsection, the term “operational document” means—

(A) a water control plan;

(B) a water control manual;

(C) a water control diagram;

(D) a release schedule;

(E) a rule curve;

(F) an operational agreement with a non-Federal entity; and

(G) any environmental documentation associated with a document described in any of subparagraphs (A) through (F).

(2) ACCEPTANCE AND USE.—The Secretary of the Army may accept and expend amounts from non-Federal entities to fund all or a portion of the cost of carrying out a review or revision of operational documents for any reservoir that is either operated or maintained by the Secretary, or for which the Secretary is authorized to prescribe regulations or otherwise advise or consult concerning the use of storage allocated for flood risk management or navigation.

(g) Effect of Manual Revisions and Other Provisions.—

(1) MANUAL REVISIONS.—In accordance with all applicable laws, a revision of a manual shall not interfere with—

(A) the authorized purposes of a Corps of Engineers project;

or

## DISCUSSION DRAFT

(B) the existing purposes of a non-Federal project that is regulated for flood control by the Secretary of the Army.

(2) EFFECT.—

(A) ACT.—Nothing in this Act authorizes the Secretary of the Army to carry out, at a Corps of Engineers or non-Federal dam or reservoir, any project or activity for a purpose not otherwise authorized as of the date of enactment of this Act.

(B) SECTION.—Nothing in this section—

(i) affects or modifies any obligation of the Secretary of the Army under State law; or

(ii) authorizes the diversion or use of water in a manner that is inconsistent with State water rights law.

(3) BUREAU OF RECLAMATION PROJECTS EXCLUDED.—This section shall not apply to any dam or reservoir owned by the Bureau of Reclamation.

(h) Modifications to Manuals and Curves.—Not later than 180 days after the date of completion of a modification to an operations manual or flood control rule curve, the Secretary of the Army shall submit to Congress a report regarding the components of the forecast-based reservoir operations plan incorporated into the change.

## SEC. 114. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State of California as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State of California;

(3) Congress has authorized relevant feasibility studies for 5 water storage projects in the State of California, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

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(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684);

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684); and

(E) expansion of San Luis Reservoir under section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694);

(4) as of the date of enactment of this Act, more than 10 years have elapsed since the authorization of the feasibility studies referred to in paragraph (3), but for a variety of reasons the slow pace of work on completion of the feasibility studies for those 5 water storage projects is unjustified and of deep concern; and

(5) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address current and future water challenges of the State of California.

## SEC. 115. STUDIES.

The Secretary of the Interior, through the Commissioner, shall—

(1) complete the Upper San Joaquin River (Temperance Flat) feasibility study described in clause (ii)(II) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than March 31, 2016;

(2) complete the Los Vaqueros Reservoir feasibility study described in clause (i)(II) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2016;

(3) complete a publicly available draft of the North-of-Delta Offstream Storage (Sites Reservoir) feasibility study described in clause (ii)(I) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2016;

(4) complete the North-of-Delta Offstream Storage (Sites Reservoir) feasibility study described in clause (ii)(I) of section

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103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2017;

(5) complete the San Luis Reservoir feasibility study described in section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) and submit the study to the appropriate Committees of the House of Representatives and the Senate not later than December 31, 2017;

(6) provide a progress report on the status of the feasibility studies referred to in paragraphs (1) through (3) to the appropriate committees of the House of Representatives and the Senate not later than 90 days after the date of enactment of this Act and every 180 days thereafter until December 31, 2017, as applicable, which report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and records of decision;

(7) document, delineate, and publish costs directly relating to the engineering and construction of a water storage project separately from the costs resulting from regulatory compliance or the construction of auxiliary facilities necessary to achieve regulatory compliance if the Secretary of the Interior determines in any feasibility study required under this subsection, reclamation laws, the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law, that the project is not feasible;

(8) include information required in paragraph (7) in the feasibility studies issued pursuant paragraphs (1) through (5), as applicable; and

(9) communicate, coordinate, and cooperate with public water agencies that—

(A) contract with the United States for Central Valley Project water; and

(B) are expected to participate in the cost pools that will be created for the projects proposed in the feasibility studies under this section.

## SEC. 116. LOSSES CAUSED BY CONSTRUCTION AND OPERATION OF WATER STORAGE PROJECTS.

The Secretary of the Interior, in consultation with other appropriate agencies, shall establish a process to address direct and substantial impacts caused by any storage projects identified under section 115.

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### Subtitle C—Desalination, Water Reuse and Recycling, and Conservation

#### SEC. 121. WATER RECYCLING AND DESALINATION PROJECTS.

(a) Findings.—Congress finds that—

(1) Federal funding to support water recycling and desalination projects in recent years has been insufficient to address water supply needs in many regions across the United States;

(2) climate variability and drought resiliency require additional water supply projects to cope with higher probabilities of longer, more intense droughts;

(3) the historic drought in the State of California highlights the necessity of long-term projects to address a changing climate;

(4) surveys conducted by the by the National Association of Clean Water Agencies, the Water Reuse Association, the Association of California Water Agencies, and the California Association of Sanitation Agencies have identified 131 water recycling projects in 14 States capable of producing 1,180,000 acre-feet of new municipal water supplies if sufficient funding or financing tools existed to facilitate development of the projects;

(5) there exists a Federal interest in the projects referred to in paragraph (4) to the extent that the projects can—

(A) diversify water supplies;

(B) reduce conflicts hindering existing Federal reclamation efforts on the Colorado River and around the Delta; and

(C) advance technologies which reduce the cost and improve the efficiency of water desalination projects; and

(6) this Act will enable Federal support for desalination projects, including the projects referred to in paragraph (4) and others by providing Federal cost-share grants, through the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298), the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.), and the WaterSMART program of the Department of the Interior, and by making low-cost loans or loan guarantees available under subtitle D.

(b) Water Recycling Projects.—On submission of a completed feasibility report in accordance with Bureau of Reclamation standards, the Secretary of the Interior shall review requests for water recycling project funding assistance and, subject to the availability of appropriations, award

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1 funding, on a competitive basis, for projects that meet the eligibility  
2 requirements of this title, subject to the condition that the Secretary shall  
3 include among the projects reviewed water recycling projects sponsored  
4 by any of the following:

- 5 (1) Bear Valley Community Services District.
- 6 (2) Beaumont Cherry Valley Water District.
- 7 (3) Burbank Water and Power.
- 8 (4) Cambria Community Services District.
- 9 (5) Central Contra Costa Sanitary District.
- 10 (6) City of American Canyon.
- 11 (7) City of Benicia.
- 12 (8) City of Brentwood.
- 13 (9) City of Camarillo.
- 14 (10) City of Carlsbad (Municipal Water District).
- 15 (11) City of Corona Department of Water and Power.
- 16 (12) City of Daly City.
- 17 (13) City of Del Mar.
- 18 (14) City of Escondido.
- 19 (15) City of Fresno.
- 20 (16) City of Hayward.
- 21 (17) City of Los Angeles (Bureau of Sanitation and Department of  
22 Water and Power).
- 23 (18) City of Modesto.
- 24 (19) City of Morro Bay.
- 25 (20) City of Mountain View.
- 26 (21) City of Oceanside.
- 27 (22) City of Palo Alto.
- 28 (23) City of Paso Robles.
- 29 (24) City of Pismo Beach.
- 30 (25) City of Pleasanton.
- 31 (26) City of Poway.
- 32 (27) City of Redwood City.
- 33 (28) City of Riverside.



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- 1 (29) City of Roseville.
- 2 (30) City of Sacramento.
- 3 (31) City of San Bernardino.
- 4 (32) City of San Diego.
- 5 (33) City of San Luis Obispo.
- 6 (34) City of Santa Barbara.
- 7 (35) City of Santa Rosa.
- 8 (36) City of Shasta Lake.
- 9 (37) City of Sunnyvale.
- 10 (38) City of Turlock.
- 11 (39) City of Vacaville.
- 12 (40) City of Visalia.
- 13 (41) Clear Creek Community Services District.
- 14 (42) Coachella Valley Water District.
- 15 (43) Cucamonga Valley Water District.
- 16 (44) Delta Diablo Sanitation District.
- 17 (45) Desert Water Agency.
- 18 (46) Dublin San Ramon Services District.
- 19 (47) East Bay Municipal Utility District.
- 20 (48) East Valley Water District.
- 21 (49) Eastern Municipal Water District.
- 22 (50) El Dorado Irrigation District.
- 23 (51) Fallbrook Public Utility District.
- 24 (52) Goleta Water District.
- 25 (53) Helendale Community Services District.
- 26 (54) Hi-Desert Water District.
- 27 (55) Idyllwild Water District.
- 28 (56) Inland Empire Utilities Agency.
- 29 (57) Ironhouse Sanitary District.
- 30 (58) Irvine Ranch Water District.
- 31 (59) Las Virgenes Municipal Water District.
- 32 (60) Leucadia Wastewater District.



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- 1 (61) Los Carneros Water District.
- 2 (62) Marin Municipal Water District.
- 3 (63) Monterey Regional Water Pollution Control Agency.
- 4 (64) Napa County Department of Public Works.
- 5 (65) North Bay Water Reuse Authority.
- 6 (66) North Marin Water District.
- 7 (67) Novato Sanitary District.
- 8 (68) Olivenhain Municipal Water District.
- 9 (69) Orange County Sanitation District.
- 10 (70) Orange County Water District.
- 11 (71) Otay Water District.
- 12 (72) Padre Dam Municipal Water District.
- 13 (73) Pajaro Valley Water Management Agency.
- 14 (74) Paradise Irrigation District.
- 15 (75) Pebble Beach Community Services District.
- 16 (76) Rainbow Municipal Water District.
- 17 (77) Ramona Municipal Water District.
- 18 (78) Rancho California Water District.
- 19 (79) Rincon Del Diablo Municipal Water District.
- 20 (80) Sacramento Regional County Sanitation District.
- 21 (81) San Bernardino County Special Districts.
- 22 (82) San Francisco Public Utilities Commission.
- 23 (83) San Jose Water Company.
- 24 (84) San Luis Obispo County.
- 25 (85) Santa Clara Valley Water District.
- 26 (86) Santa Clarita Valley Sanitation District.
- 27 (87) Santa Fe Irrigation District.
- 28 (88) Santa Margarita Water District.
- 29 (89) Sonoma County Water Agency.
- 30 (90) South Orange County Wastewater Authority.
- 31 (91) South Tahoe Public Utility District.
- 32 (92) Sunnyslope County Water District.

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- 1 (93) Town of Yountville.
- 2 (94) Tuolumne Utilities District.
- 3 (95) Upper San Gabriel Valley Municipal Water District.
- 4 (96) Valley Center Municipal Water District.
- 5 (97) Valley Sanitary District.
- 6 (98) Ventura County Waterworks District No. 8.
- 7 (99) Victor Valley Wastewater Reclamation Authority.
- 8 (100) West Basin Municipal Water District.
- 9 (101) West Bay Sanitary District.
- 10 (102) West County Wastewater District.
- 11 (103) Western Municipal Water District of Riverside County.
- 12 (104) Western Riverside County Regional Wastewater Authority.
- 13 (105) Yucaipa Valley Water District.

14 (c) Federal Support for Water Recycling Projects.—Water recycling  
15 and reuse projects described in subsection (b) may compete for funding  
16 authorized under the following sections of this title if the projects meet  
17 applicable eligibility requirements, subject to the condition that no  
18 particular project receive Federal grant funding from more than one  
19 Federal program:

20 (1) Section 101, which amends section 9504 (WaterSMART) of  
21 the Omnibus Public Land Management Act of 2009 (42 U.S.C.  
22 10364) and authorizes \$150,000,000 in additional Federal assistance  
23 for water storage and conveyance facilities, integrated regional water  
24 management, reclamation and recycling projects, and groundwater  
25 recharge.

26 (2) Section 123, which amends the Reclamation Wastewater and  
27 Groundwater Study and Facilities Act (43 U.S.C. 390h) and  
28 authorizes \$200,000,000 in Federal assistance for water recycling and  
29 reuse projects.

30 (3) Subtitle D, which authorizes the Secretary of the Interior to  
31 provide Federal assistance to finance the development of critical  
32 water resource infrastructure through loans and loan guarantees to  
33 qualified applicants.

34 (d) Federal Support for Desalination Projects.—

35 (1) ELIGIBILITY.—On submission of a completed feasibility report  
36 in accordance with Bureau of Reclamation standards, the Secretary of  
37 the Interior shall review requests for water desalination funding  
38 assistance and, subject to the availability of appropriations, award

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1 funding on a competitive basis for projects that meet the eligibility  
2 requirements of this title, subject to the condition that the Secretary  
3 shall include among the projects reviewed the following desalination  
4 projects referred to in the 2013 California Water Plan or in an  
5 integrated regional water management plan accepted by the State of  
6 California:

7 (A) Cambria Desalination Project.

8 (B) Camp Pendleton Seawater Desalination Project.

9 (C) Chino Basin Desalter 3.

10 (D) Doheny Ocean Desalination Project.

11 (E) GREAT Program Groundwater Desalination Facility  
12 Expansion.

13 (F) Huntington Beach Seawater Desalination Project.

14 (G) Irvine Non-Potable Shallow Groundwater Unit Desalter.

15 (H) Irvine Ranch Water District Wells 51, 52, 53, 21, and 22  
16 Potable (Non-exempt) Desalter Plant.

17 (I) Long Beach Seawater Desalination Project.

18 (J) Marina Desalination Facility Expansion.

19 (K) Mission Valley Brackish Groundwater Recovery Project.

20 (L) Monterey Bay Regional Water Project Desalination  
21 Facility (Moss Landing).

22 (M) Monterey Peninsula Water Supply Project.

23 (N) Monterey Peninsula Water Supply Project (Ocean  
24 Desalination/Groundwater Replenishment).

25 (O) Moorpark Groundwater Desalter.

26 (P) North Pleasant Valley Groundwater Desalter.

27 (Q) Oceanside Ocean Desalination Project (San Luis Rey  
28 Basin).

29 (R) Perris II Desalter.

30 (S) Ramona Desalting Facility.

31 (T) San Diego Formation/Balboa Park Groundwater  
32 Desalination Facility.

33 (U) San Elijo Valley Groundwater Project.

34 (V) San Pasqual Brackish Groundwater Recovery Project.

35 (W) Santa Cruz/Soquel Creek Water District Desalination  
36 Plant.

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(X) South Orange Coastal Ocean Desalination Project.

(Y) West Basin Seawater Desalination Regional Project.

(Z) West Simi Valley Desalter.

(AA) Bay Area Regional Desalination Project.

(2) FUNDING.—Desalination projects described in subsection (1) may compete for funding authorized under the following sections of this Title if the projects meet applicable eligibility requirements, subject to the condition that no particular project receive Federal grant funding from more than one Federal program:

(A) Section 101, which amends section 9504 (WaterSMART) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) and authorizes \$150,000,000 in additional Federal assistance for water storage and conveyance facilities, integrated regional water management, reclamation and recycling projects, and groundwater recharge.

(B) Section 122, which reauthorizes the Water Desalination Act of 1996 (42 U.S.C. 10301; Public Law 104-298) as amended, and authorizes \$100,000,000 in Federal assistance for desalination research, demonstration projects, and desalination project feasibility and design.

(C) Section 123, which amends the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h) and authorizes \$200,000,000 in Federal assistance for water recycling and reuse projects.

(D) Subtitle D, which authorizes the Secretary of the Interior to provide Federal assistance to finance the development of critical water resource infrastructure through loans and loan guarantees to qualified applicants.

## SEC. 122. REAUTHORIZATION OF WATER DESALINATION ACT.

(a) Authorization of Research and Studies.—

(1) IN GENERAL.—Section 3 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104-298) is amended by adding at the end the following:

“(e) Prioritization.—In carrying out this section, the Secretary of the Interior shall prioritize funding for research—

“(1) to reduce energy consumption and lower the cost of seawater and brackish water desalination;

“(2) to reduce the environmental impacts of seawater desalination,

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- 1 including subsurface intakes and other technological improvements,  
2 and develop technology and strategies to mitigate those impacts;
- 3 “(3) to improve existing reverse osmosis and membrane  
4 technology;
- 5 “(4) to carry out basic and applied research on next generation  
6 desalination technologies, including graphene membranes, forward  
7 osmosis, hybrid membrane-thermal desalination, improved energy  
8 recovery systems, and renewable energy-powered desalination  
9 systems that could significantly reduce desalination costs;
- 10 “(5) to develop portable or modular desalination units capable of  
11 providing temporary emergency water supplies for domestic or  
12 military deployment purposes; and
- 13 “(6) to encourage development of desalination siting plans,  
14 including maps of preferred and priority locations, by States that  
15 consider local and regional water supply needs and sources, potential  
16 impacts on coastal and ocean resources and fisheries, the effects of  
17 sea level rise and other factors that affect project siting.”.
- 18 (b) Desalination Demonstration and Development.—Section 4 of the  
19 Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–  
20 298) is amended—
- 21 (1) in subsection (a)—
- 22 (A) by redesignating paragraphs (2) and (3) as paragraphs (3)  
23 and (4), respectively; and
- 24 (B) by inserting after paragraph (1) the following:
- 25 “(2) FEASIBILITY AND DESIGN.—Award grants and enter into  
26 contracts with non-Federal project sponsors to provide financial  
27 assistance to study the feasibility and support the design of  
28 desalination facilities (including associated water distribution  
29 infrastructure) that provide usable water.”; and
- 30 (2) by adding at the end the following:
- 31 “(c) Prioritization.—In carrying out demonstration and development  
32 activities under subsection (a), the Secretary of the Interior shall prioritize  
33 projects—
- 34 “(1) in drought-stricken States and communities;
- 35 “(2) in States for which funding has been authorized for  
36 desalination demonstration and development projects; and
- 37 “(3) that can reduce reliance on imported water supplies that have  
38 an impact on species listed under the Endangered Species Act of  
39 1973 (16 U.S.C. 1531 et seq.).
- 40 “(d) Criteria for Eligibility.—In carrying out this section, the Secretary

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of the Interior shall establish criteria to determine projects eligible for grant funding based on the ability of the projects to provide regional water supply benefits, including—

“(1) improving water supply reliability in regions subject to frequent and severe drought;

“(2) enhancement of public health, safety, ecosystems, and watershed sustainability;

“(3) preservation of groundwater through reduction of withdrawals from aquifers;

“(4) offsetting demand for water conveyed from environmentally sensitive areas outside service area of the project; and

“(5) mitigation of saltwater intrusion to aquifers.”.

(c) Cost Sharing.—Section 7 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) in the first sentence, by striking “The Federal share” and inserting the following:

“(a) Maximum.—

“(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b) and limited to the 5 years following the date of enactment of the California Emergency Drought Relief Act, the Federal share”;

(2) in the second sentence, by striking “A Federal” and inserting the following:

“(b) Feasibility Determination.—A Federal”;

(3) in the third sentence, by striking “The Secretary” and inserting the following:

“(c) Procedures.—The Secretary”;

(4) in the fourth sentence, by striking “Costs” and inserting the following:

“(d) Operation, Maintenance, Repair, and Rehabilitation.—The costs”;  
and

(5) in subsection (a) (as designated by paragraph (1)), by adding at the end the following:

“(2) EXCEPTION.—The Federal share of the cost of project design under section 4 shall not exceed 25 percent of the total cost of the project design.”.

(d) Authorization of Appropriations.—In order to advance water desalination research and project development, Section 8 of the Water

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Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) in subsection (a), in the first sentence—

(A) by striking “\$5,000,000” and inserting “\$10,000,000”;  
and

(B) by striking “2013” and inserting “2020”; and

(2) in subsection (b), by striking “\$3,000,000 for each of fiscal years 2012 through 2013” and inserting “\$50,000,000 for the period of fiscal years 2016 through 2020”.

(e) Consultation.—Section 9 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) by striking the section designation and heading and all that follows through “In carrying out the provisions of” in the first sentence and inserting the following:

### “SEC. 9. CONSULTATION AND COORDINATION.

“(a) Consultation.—In carrying out”;

(2) in the second sentence, by striking “The authorization” and inserting the following:

“(b) Other Desalination Programs.—The authorization”; and

(3) by inserting after subsection (b) (as so designated) the following:

“(c) Coordination of Federal Desalination Research and Development.—For the effective period of the California Emergency Drought Relief Act, the White House Office of Science and Technology Policy shall develop a coordinated strategic plan that—

“(1) establishes priorities for future Federal investments in desalination; and

“(2) coordinates the activities of Federal agencies involved in desalination, including the Bureau of Reclamation, the National Science Foundation, the Office of Naval Research of the Department of Defense, the National Laboratories of the Department of Energy, the United States Geological Survey, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration.”.

### SEC. 123. NEW WATER RECYCLING AND REUSE PROJECTS.

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Section 1602 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h) is amended by adding at the end the following:

“(e) Authorization of New Water Recycling and Reuse Projects.—

“(1) IN GENERAL.—A non-Federal interest may submit to the Secretary of the Interior proposals for eligible projects in the form of completed feasibility studies.

“(2) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of the Interior may provide financial assistance under this subtitle to carry out projects within—

“(A) any Reclamation State, including—

“(i) Arizona;

“(ii) California;

“(iii) Colorado;

“(iv) Idaho;

“(v) Kansas;

“(vi) Montana;

“(vii) Nebraska;

“(viii) Nevada;

“(ix) New Mexico;

“(x) North Dakota;

“(xi) Oklahoma;

“(xii) Oregon;

“(xiii) South Dakota;

“(xiv) Texas;

“(xv) Utah;

“(xvi) Washington; and

“(xvii) Wyoming; and

“(B) the States of Alaska and Hawaii.

“(3) ELIGIBLE PROJECTS.—A project shall be considered to be eligible for consideration under this subsection if the project reclaims and reuses—

“(A) municipal, industrial, domestic, or agricultural wastewater; or

“(B) impaired groundwater or surface water.



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1 “(4) REVIEW.—The Secretary of the Interior shall review each  
2 feasibility study received under paragraph (1) to determine whether  
3 the study, and the process under which the study was developed,  
4 comply with Federal laws (including regulations) applicable to  
5 feasibility studies of water recycling and reuse projects.

6 “(f) Competitive Grant Funding of Water Recycling and Reuse  
7 Projects.—

8 “(1) IN GENERAL.—The Secretary of the Interior shall administer a  
9 competitive grant program under which the non-Federal project  
10 sponsor of any project determined by the Secretary of the Interior to  
11 be feasible under subsection (e)(4) shall be eligible to apply for  
12 funding for the planning, design, and construction of the project.

13 “(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
14 be appropriated to the Secretary of the Interior to carry out this  
15 subsection \$200,000,000, to remain available until expended.”.

## 21 SEC. 124. PROMOTING WATER 22 EFFICIENCY WITH WATERSENSE.

23 (a) Authorization.—The Administrator of the Environmental Protection  
24 Agency (referred to in this section as the “Administrator”) is authorized to  
25 continue to carry out the voluntary program, known as the “WaterSense  
26 Program”, to identify and promote water efficient products, buildings,  
27 landscapes, facilities, processes, and services so as—

28 (1) to reduce water use;

29 (2) to reduce the strain on water, wastewater, and stormwater  
30 infrastructure;

31 (3) to conserve energy used to pump, heat, transport, and treat  
32 water; and

33 (4) to preserve water resources for future generations, through  
34 voluntary labeling of, or other forms of communications regarding,  
35 products, buildings, landscapes, facilities, processes, and services that  
36 meet the highest water efficiency and performance criteria.

37 (b) Review.—Not less frequently than once every 4 years, the  
38 Administrator shall regularly review and, if appropriate, update  
39 WaterSense criteria that have been adopted for the voluntary labeling of  
40 categories of products, buildings, landscapes, facilities, processes, and  
41 services.

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(c) Transparency.—The Administrator shall, to the maximum extent practicable, regularly estimate and make available to the public the production and relative market shares of, and the savings of water, energy, and capital costs of water, wastewater, and stormwater infrastructure attributable to the use of WaterSense-labeled products, buildings, landscapes, facilities, processes, and services, at least annually.

(d) Public Comment.—Prior to establishing or revising a WaterSense category, specification, installation criterion, or other criterion, the Administrator shall—

(1) solicit comments from interested parties and the public; and

(2) provide reasonable notice to interested parties and the public of any changes (including effective dates), on the adoption of a new or revised category, specification, installation criterion, or other criterion.

(e) Authorization of Appropriations.—There is authorized to be appropriated to carry out the WaterSense program of the Environmental Protection Agency \$2,500,000 for each of fiscal years 2016 through 2019.

### Subtitle D—Reclamation Infrastructure Finance and Innovation

#### SEC. 131. PURPOSES.

The purposes of this subtitle are—

(1) to promote increased development of critical water resources infrastructure by establishing additional opportunities for financing water resources projects;

(2) to attract new investment capital to infrastructure projects that are capable of generating revenue streams through user fees or other dedicated funding sources;

(3) to complement existing Federal funding sources and address budgetary constraints on Bureau of Reclamation programs; and

(4) to leverage private investment in water resources infrastructure.

#### SEC. 132. DEFINITIONS.

In this subtitle:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) a corporation;

(B) a partnership;

(C) a joint venture;

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1 (D) a trust;

2 (E) a State, or local governmental entity, agency, or  
3 instrumentality; and

4 (F) a conservancy district, irrigation district, canal company,  
5 mutual water company, water users' association, Indian tribe,  
6 agency created by interstate compact, or any other entity that has  
7 the capacity to contract with the United States under the  
8 reclamation laws.

9 (2) FEDERAL CREDIT INSTRUMENT.—The term “Federal credit  
10 instrument” means a secured loan or loan guarantee authorized to be  
11 made available under this title with respect to a project.

12 (3) INVESTMENT-GRADE RATING.—The term “investment-grade  
13 rating” means a rating of BBB minus, Baa3, bbb minus, BBB (low),  
14 or higher as assigned by a rating agency to project obligations.

15 (4) LENDER.—

16 (A) IN GENERAL.—The term “lender” means any non-Federal  
17 qualified institutional buyer (as defined in section 230.144A(a)  
18 of title 17, Code of Federal Regulations (or a successor  
19 regulation) (commonly known as “Rule 144A(a) of the  
20 Securities and Exchange Commission” and issued under the  
21 Securities Act of 1933 (15 U.S.C. 77a et seq.))).

22 (B) INCLUSIONS.—The term “lender” includes—

23 (i) a qualified retirement plan (as defined in section 4974  
24 of the Internal Revenue Code of 1986) that is a qualified  
25 institutional buyer; and

26 (ii) a governmental plan (as defined in section 414 of the  
27 Internal Revenue Code of 1986) that is a qualified  
28 institutional buyer.

29 (5) LOAN GUARANTEE.—The term “loan guarantee” means any  
30 guarantee or other pledge by the Secretary of the Interior to pay all or  
31 part of the principal of, and interest on, a loan or other debt obligation  
32 issued by an obligor and funded by a lender.

33 (6) OBLIGOR.—The term “obligor” means an eligible entity that is  
34 primarily liable for payment of the principal of, or interest on, a  
35 Federal credit instrument.

36 (7) PROJECT OBLIGATION.—

37 (A) IN GENERAL.—The term “project obligation” means any  
38 note, bond, debenture, or other debt obligation issued by an  
39 obligor in connection with the financing of a project.

40 (B) EXCLUSION.—The term “project obligation” does not

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1 include a Federal credit instrument.

2 (8) RATING AGENCY.—The term “rating agency” means a credit  
3 rating agency registered with the Securities and Exchange  
4 Commission as a nationally recognized statistical rating organization  
5 (as defined in section 3(a) of the Securities Exchange Act of 1934 (15  
6 U.S.C. 78c(a)).

7 (9) RECLAMATION STATE.—The term “Reclamation State” means  
8 any of the States of—

9 (A) Arizona;

10 (B) California;

11 (C) Colorado;

12 (D) Idaho;

13 (E) Kansas;

14 (F) Montana;

15 (G) Nebraska;

16 (H) Nevada;

17 (I) New Mexico;

18 (J) North Dakota;

19 (K) Oklahoma;

20 (L) Oregon;

21 (M) South Dakota;

22 (N) Texas;

23 (O) Utah;

24 (P) Washington; and

25 (Q) Wyoming.

26 (10) SECURED LOAN.—The term “secured loan” means a direct  
27 loan or other debt obligation issued by an obligor and funded by the  
28 Secretary in connection with the financing of a project under subtitle  
29 A.

30 (11) SUBSIDY AMOUNT.—The term “subsidy amount” means the  
31 amount of budget authority sufficient to cover the estimated long-  
32 term cost to the Federal Government of a Federal credit instrument,  
33 as calculated on a net present value basis, excluding administrative  
34 costs and any incidental effects on Governmental receipts or outlays  
35 in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C.  
36 661 et seq.).

37 (12) SUBSTANTIAL COMPLETION.—The term “substantial

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completion”, with respect to a project, means the earliest date on which a project is considered to perform the functions for which the project is designed.

### SEC. 133. AUTHORITY TO PROVIDE ASSISTANCE.

The Secretary of the Interior may provide financial assistance under this subtitle to carry out projects within—

- (1) any Reclamation State;
- (2) any other State in which the Bureau of Reclamation is authorized to provide project assistance; and
- (3) the States of Alaska and Hawaii.

### SEC. 134. APPLICATIONS.

To be eligible to receive assistance under this subtitle, an eligible entity shall submit to the Secretary of the Interior an application at such time, in such manner, and containing such information as the Secretary of the Interior may require.

### SEC. 135. ELIGIBILITY FOR ASSISTANCE.

(a) Eligible Projects.—The following non-federally owned projects that contribute to a safe, adequate water supply for domestic, agricultural, environmental, or municipal and industrial use may be carried out using assistance made available under this subtitle:

- (1) A project for the reclamation and reuse of wastewater, and naturally impaired ground and surface waters, which has a completed feasibility study that complies with Reclamation standards.
- (2) A new water infrastructure facility project, including a water conduit, pipeline, canal, pumping, power, and associated facilities.
- (3) A project for accelerated repair and replacement of an aging water distribution facility.
- (4) A brackish or sea water desalination project.
- (5) A project for groundwater replenishment, groundwater storage, or surface storage.
- (6) A combination of projects, each of which is eligible under paragraphs (1) through (5), for which an eligible entity or group of eligible entities submits a single application.

(b) Activities Eligible for Assistance.—For purposes of this subtitle, an eligible activity with respect to an eligible project under subsection (a) includes the cost of—

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(1) development-phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(2) construction, reconstruction, rehabilitation, and replacement activities;

(3) the acquisition of real property (including water rights, land relating to the project, and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment subject to subsection (c);

(4) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction; and

(5) refinancing interim construction funding, existing long-term project obligations, or a secured loan or loan guarantee made under this subtitle.

(c) Limitation on Use.—The proceeds from Federal credit instruments made available under this subtitle may only be used to acquire non-Federal land or interest in land from a willing seller, when the seller does not contest the purchase or price paid.

## SEC. 136. DETERMINATION OF ELIGIBILITY AND PROJECT SELECTION.

(a) Eligibility Requirements.—To be eligible to receive financial assistance under this subtitle, a project shall meet the following criteria, as determined by the Secretary of the Interior:

### (1) CREDITWORTHINESS.—

(A) IN GENERAL.—Subject to subparagraph (B), the project shall be creditworthy, as determined by the Secretary of the Interior, who shall ensure that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(B) PRELIMINARY RATING OPINION LETTER.—The Secretary of the Interior shall require each applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicating that the senior obligations of the project (which may be the Federal credit instrument) have the potential to achieve an investment-grade rating.

(2) ELIGIBLE PROJECT COSTS.—The eligible project costs of a project shall be reasonably anticipated to be not less than \$20,000,000.

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1 (3) DEDICATED REVENUE SOURCES.—The Federal credit instrument  
2 for the project shall be repayable, in whole or in part, from dedicated  
3 revenue sources that also secure the project obligations.

4 (4) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—A project carried  
5 out by a private entity shall be sponsored by a State, department of a  
6 State, subdivision of a State, or a public agency organized pursuant to  
7 State law.

8 (b) Selection Criteria.—

9 (1) ESTABLISHMENT.—The Secretary of the Interior shall establish  
10 criteria for the selection of projects that meet the eligibility  
11 requirements of subsection (a), in accordance with paragraph (2).

12 (2) CRITERIA.—The selection criteria shall include the following:

13 (A) The extent to which a project serves a region with  
14 significant water resources challenges.

15 (B) The extent to which the project is nationally or regionally  
16 significant.

17 (C) The extent to which assistance under this section would  
18 foster innovative public-private partnerships and attract private  
19 debt or equity investment.

20 (D) The extent to which the project fosters—

21 (i) collaborative partnerships between cities, counties,  
22 water districts, and State and Federal agencies; and

23 (ii) innovative recycling programs that augment a  
24 combination of industrial, commercial, residential, and  
25 agricultural uses.

26 (E) The likelihood that assistance under this section would  
27 enable the project to proceed at an earlier date than the project  
28 would otherwise be able to proceed.

29 (F) The amount of budget authority required to fund the  
30 Federal credit instrument made available under this subtitle.

31 (G) The extent to which the project helps maintain or protect  
32 the environment.

33 (3) CONSISTENCY OF CRITERIA.—Not later than 180 days after the  
34 date of enactment of this Act, the Secretary of the Interior shall issue  
35 eligibility requirements under this title for water recycling projects  
36 that reclaim and reuse municipal, industrial, domestic, or agricultural  
37 wastewater or impaired ground or surface waters.

38 (c) Receipt of Other Federal Funding.—Receipt of a Federal grant or  
39 contract or other Federal funding to support an eligible project shall not  
40 preclude the project from being eligible for assistance under this subtitle.



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Assistance under this subtitle shall not be counted as Federal funding under cost-sharing requirements otherwise applicable to a project eligible for assistance under this subtitle.

### SEC. 137. SECURED LOANS.

#### (a) Agreements.—

(1) IN GENERAL.—Subject to paragraphs (2) through (4), the Secretary of the Interior may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 136;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 136; or

(C) to refinance long-term project obligations or Federal credit instruments, if that refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 136; or

(ii) otherwise meets the requirements of section 136.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A secured loan under paragraph (1) shall not be used to refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the applicable project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection for a secured loan, the Secretary of the Interior, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 136(a)(1)(B), shall determine an appropriate capital reserve subsidy amount for the secured loan, taking into account each such preliminary rating opinion letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The execution of a secured loan under this section shall be contingent on receipt by the senior obligations of the project of an investment-grade rating.

#### (b) Terms and Limitations.—

(1) IN GENERAL.—A secured loan provided for a project under this section shall be subject to such terms and conditions, and contain such covenants, representations, warranties, and requirements (including requirements for audits), as the Secretary of the Interior determines to be appropriate.



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(2) NONSUBORDINATION.—A secured loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor of the project.

(3) MAXIMUM AMOUNT.—The amount of a secured loan under this section shall not exceed the lesser of—

(A) an amount equal to 49 percent of the reasonably anticipated eligible project costs; and

(B) if the secured loan does not receive an investment-grade rating, an amount equal to other project obligations that have received an investment-grade rating.

(4) PAYMENT.—A secured loan under this section—

(A) shall be payable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the relevant project;

(B) shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(C) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(5) INTEREST RATE.—The interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(6) MATURITY DATE.—The final maturity date of a secured loan under this section shall be not later than 35 years after the date of substantial completion of the relevant project.

(7) FEES.—The Secretary of the Interior may establish fees, in accordance with section 138(b)(2) at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this section may be used to pay any non-Federal share of project costs required if the loan is repayable from non-Federal funds.

(9) MAXIMUM FEDERAL INVOLVEMENT.—The total amount of Federal assistance provided for a project for which assistance is provided under this subtitle from all sources (including this subtitle) shall not exceed 80 percent of the total cost of the project.

(c) Repayment.—

(1) SCHEDULE.—The Secretary of the Interior shall establish a repayment schedule for each secured loan provided under this

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section, based on the projected cash flow from project revenues and other repayment sources.

(2) COMMENCEMENT.—Scheduled loan repayment of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project, with interest accruing during those 5 years and during construction.

(3) DEFERRED PAYMENTS.—

(A) AUTHORIZATION.—If, at any time after the date of substantial completion of a project for which a secured loan is provided under this section, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary of the Interior may allow the obligor, subject to subparagraph (C), to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(5) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the secured loan.

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting such criteria as the Secretary of the Interior may establish.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay a secured loan under this section without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—A secured loan under this section may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

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1 (d) Sale of Secured Loans.—

2 (1) IN GENERAL.—Subject to paragraph (2), as soon as practicable  
3 after the date of substantial completion of a project and after  
4 providing a notice to the obligor, the Secretary of the Interior may  
5 sell to another entity or reoffer into the capital markets a secured loan  
6 for a project under this section, if the Secretary of the Interior  
7 determines that the sale or reoffering can be made on favorable terms.

8 (2) CONSENT OF OBLIGOR.—In making a sale or reoffering under  
9 paragraph (1), the Secretary of the Interior may not change the  
10 original terms and conditions of the secured loan without the written  
11 consent of the obligor.

12 (e) Loan Guarantees.—

13 (1) IN GENERAL.—The Secretary of the Interior may provide a loan  
14 guarantee to a lender in lieu of making a secured loan under this  
15 section, if the Secretary of the Interior determines that the budgetary  
16 cost of the loan guarantee is substantially the same as that of a  
17 secured loan.

18 (2) TERMS.—The terms of a loan guarantee provided under this  
19 subsection shall be consistent with the terms established in this  
20 section for a secured loan, except that the rate on the guaranteed loan  
21 and any prepayment features shall be negotiated between the obligor  
22 and the lender, with the consent of the Secretary of the Interior.

23 **SEC. 138. PROGRAM ADMINISTRATION.**

24 (a) Requirement.—The Secretary of the Interior shall establish a  
25 uniform system to service the Federal credit instruments made available  
26 under this subtitle.

27 (b) Reclamation Loan Finance Capital Reserve Fund.—

28 (1) ESTABLISHMENT.—

29 (A) IN GENERAL.—There is established in the Treasury of the  
30 United States a fund, to be known as the “Reclamation Loan  
31 Finance Capital Reserve Fund”.

32 (B) DEPOSITS TO FUND.—The Secretary of the Treasury shall  
33 deposit in the fund established by subparagraph (A) an amount  
34 equal to the amount of capital reserve fees collected under  
35 paragraph (2) for each applicable fiscal year.

36 (C) TREATMENT.—The amounts deposited in the fund under  
37 subparagraph (B) shall be credited as offsetting collections.

38 (2) CAPITAL RESERVE FEES.—

39 (A) IN GENERAL.—To the extent required by appropriations

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1 Acts, the Secretary of the Interior may assess, collect, and spend  
2 capital reserve fees at a level that is sufficient to cover all or a  
3 portion of the costs to the Federal Government of servicing the  
4 Federal credit instruments provided under this subtitle, including  
5 all or a portion of the outlays associated with the provision of  
6 the Federal credit instruments under this subtitle.

7 (B) AMOUNT.—The capital reserve fees under this paragraph  
8 shall be established at amounts that will result in the collection,  
9 during each fiscal year, of an amount that can be reasonably  
10 expected to equal the outlays associated with the provision of  
11 the Federal credit instruments under this subtitle.

12 (c) Servicer.—

13 (1) IN GENERAL.—The Secretary of the Interior may appoint a  
14 financial entity to assist the Secretary in servicing the Federal credit  
15 instruments provided under this subtitle.

16 (2) DUTIES.—A servicer appointed under paragraph (1) shall act as  
17 the agent for the Secretary of the Interior.

18 (3) FEE.—A servicer appointed under paragraph (1) shall receive a  
19 servicing fee, subject to approval by the Secretary of the Interior.

## 20 SEC. 139. STATE AND LOCAL PERMITS.

21 (a) Establishment of Pilot Program.—

22 (1) ASSUMPTION OF RESPONSIBILITY.—

23 (A) IN GENERAL.—Subject to the provisions of the pilot  
24 program established by this section, the Secretary of the Interior  
25 and a State identified pursuant to subsection (b) may enter into a  
26 written agreement, which may be in the form of a memorandum  
27 of understanding, under which the Secretary of the Interior may  
28 designate the State as lead agency for purposes of the National  
29 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

30 (B) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—If  
31 designated as the lead agency under subparagraph (A), the State  
32 shall assume responsibility under this section, subject to the  
33 same procedural and substantive requirements that would apply  
34 if that responsibility were carried out by the Secretary of the  
35 Interior.

36 (2) PRESERVATION OF FEDERAL RESPONSIBILITY AND AUTHORITY.—

37 (A) FEDERAL RESPONSIBILITY.—Any responsibility of the  
38 Secretary of the Interior not explicitly assumed by the State by  
39 written agreement under this section shall remain the  
40 responsibility of the Secretary of the Interior.

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1 (B) NO EFFECT ON AUTHORITY.—Nothing in this section  
2 preempts or interferes with any power, jurisdiction,  
3 responsibility, or authority of an agency, other than the  
4 Department of the Interior, under applicable law (including  
5 regulations) with respect to a project.

6 (3) PRESERVATION OF FLEXIBILITY.—The Secretary of the Interior  
7 may not require a State, as a condition of participation and assuming  
8 lead agency status in the pilot program under this section, to forego  
9 project delivery methods that are otherwise permissible for projects.

10 (b) State Participation.—

11 (1) PARTICIPATING STATES.—The Secretary of the Interior shall  
12 permit the State of California, and not more than 4 additional States,  
13 to participate in the pilot program under this section, subject to the  
14 limitations described in paragraph (4).

15 (2) APPLICATION.—Not later than 270 days after the date of  
16 enactment of this Act, the Secretary of the Interior shall amend, as  
17 appropriate, regulations that establish requirements relating to  
18 information required to be contained in an application of a State to  
19 participate in the pilot program under this section and to assume lead  
20 agency status, including, at a minimum—

21 (A) the projects or classes of projects for which the State  
22 anticipates exercising the authority that may be granted under  
23 the pilot program under this section;

24 (B) verification of the financial, regulatory, and enforcement  
25 resources necessary to carry out the authority that may be  
26 granted under the pilot program under this section; and

27 (C) evidence of the notice and solicitation of public comment  
28 by the State relating to participation of the State in the pilot  
29 program under this section, including copies of comments  
30 received from that solicitation.

31 (3) PUBLIC NOTICE.—

32 (A) IN GENERAL.—A State that submits an application under  
33 this subsection shall give notice of the intent of the State to  
34 participate in the pilot program under this section not later than  
35 30 days before the date of submission of the application.

36 (B) METHOD OF NOTICE AND SOLICITATION.—A State shall  
37 provide notice and solicit public comment under this paragraph  
38 by publishing the complete application of the State in  
39 accordance with the appropriate public notice State law.

40 (4) SELECTION CRITERIA.—The Secretary of the Interior may  
41 approve the application of a State under this section only if—

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1 (A) the regulatory requirements of paragraph (2) have been  
2 met;

3 (B) the Secretary of the Interior determines that the State has  
4 the capability, including financial, regulatory, and enforcement  
5 capability and personnel, to assume the responsibility of a lead  
6 agency for the project; and

7 (C) the head of the State agency with primary jurisdiction  
8 over water infrastructure matters enters into a written agreement  
9 with the Secretary of the Interior described in subsection (c).

10 (c) Written Agreement.—A written agreement under this section  
11 shall—

12 (1) be executed by the Governor or the top ranking water  
13 infrastructure official in the State who is charged with responsibility  
14 for water infrastructure construction;

15 (2) be in such form as the Secretary of the Interior may prescribe;

16 (3) provide that the State—

17 (A) agrees to assume all or part of the responsibilities of the  
18 Secretary of the Interior described in subsection (a), including  
19 all responsibilities as a lead agency;

20 (B) expressly consents, on behalf of the State, to accept the  
21 jurisdiction of the Federal courts for the compliance, discharge,  
22 and enforcement of any responsibility of the Secretary of the  
23 Interior assumed by the State;

24 (C) certifies that State laws (including regulations) are in  
25 effect that authorize the State to take the actions necessary to  
26 carry out the responsibilities being assumed; and

27 (D) agrees to maintain the financial resources necessary to  
28 carry out the responsibilities being assumed;

29 (4) require the State to provide to the Secretary of the Interior any  
30 information that the Secretary of the Interior considers necessary to  
31 ensure that the State is adequately carrying out the responsibilities  
32 assigned to the State;

33 (5) have a term of not more than 5 years; and

34 (6) be renewable.

35 (d) Jurisdiction.—

36 (1) IN GENERAL.—The United States district courts shall have  
37 exclusive jurisdiction over any civil action against a State for failure  
38 to carry out any responsibility of the State under this section.

39 (2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under

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paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary of the Interior if the Secretary of the Interior had taken the actions in question.

(3) INTERVENTION.—The Secretary of the Interior shall have the right to intervene in any action described in paragraph (1).

(e) Effect of Assumption of Responsibility.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary of the Interior, the responsibilities assumed under subsection (a), until the pilot program is terminated as provided in subsection (h).

(f) Audits.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the pilot program under this section, the Secretary of the Interior shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be made available to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary of the Interior shall respond to public comments received under subparagraph (A).

(g) Monitoring.—After the fourth year of the participation of a State in the pilot program, the Secretary of the Interior shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(h) Termination.—

(1) TERMINATION BY SECRETARY OF THE INTERIOR.—The Secretary of the Interior may terminate the participation of any State in the pilot program if—

(A) the Secretary of the Interior determines that the State is not adequately carrying out the responsibilities assigned to the State;



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(B) the Secretary of the Interior provides to the State—

(i) notification of the determination of noncompliance;  
and

(ii) a period of at least 30 days during which to take such  
corrective action as the Secretary of the Interior determines  
is necessary to comply with the applicable agreement; and

(C) the State, after the notification and period provided under  
subparagraph (B), fails to take satisfactory corrective action, as  
determined by Secretary of the Interior.

(2) TERMINATION BY STATE.—The State may terminate the  
participation of the State in the pilot program at any time by  
providing to the Secretary of the Interior a notice by not later than the  
date that is 90 days before the date of termination, and subject to such  
terms and conditions as the Secretary of the Interior may provide.

(i) Limitations on Agreements.—Nothing in this section or pilot  
program—

(1) authorizes a State to assume any rulemaking authority of the  
Secretary of the Interior under any Federal law;

(2) relieves any recipient of the assistance of any obligation to  
obtain any other required State or local permit or approval with  
respect to the project;

(3) limits the right of any unit of State or local government to  
approve or regulate any rate of return on private equity invested in  
the project; or

(4) otherwise supersedes any State or local law (including any  
regulation) applicable to the construction or operation of the project.

## SEC. 140. REGULATIONS.

The Secretary of the Interior may promulgate such regulations as the  
Secretary of the Interior determines to be appropriate to carry out this  
subtitle.

## SEC. 141. FUNDING.

(a) In General.—There is authorized to be appropriated to the Secretary  
of the Interior to carry out this subtitle \$200,000,000.

(b) Offset Required.—No funds made available under this section may  
be used to provide financial assistance under this subtitle unless sufficient  
funds have been appropriated to offset any decrease in Federal revenue  
resulting from the use by any unit of State or local government of  
proceeds of any obligation—

(1) the interest on which is exempt from the tax imposed under



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1 chapter 1 of the Internal Revenue Code of 1986; or

2 (2) with respect to which credit is allowable under subpart I or J of  
3 part IV of subchapter A of chapter 1 of that Code.

4 (c) Administrative Costs.—Of the funds made available to carry out this  
5 subtitle, the Secretary of the Interior may use for the administration of this  
6 subtitle not more than \$2,200,000 for each of fiscal years 2016 through  
7 2020.

## 8 TITLE II—LISTED SPECIES AND WILDLIFE

### 9 SEC. 201. ACTIONS TO BENEFIT 10 ENDANGERED FISH POPULATIONS.

11 (a) Findings.—Congress finds that—

12 (1) minimizing or eliminating stressors to fish and their habitat in  
13 an efficient and structured manner is a key aspect of a fish recovery  
14 strategy;

15 (2) functioning, diverse, and interconnected habitats are necessary  
16 for a species to be viable; and

17 (3) providing for increased fish habitat may not only allow for a  
18 more robust fish recovery, but also reduce impacts to water supplies.

19 (b) Actions for Benefit of Endangered Species.—There is authorized to  
20 be appropriated the following amounts:

21 (1) \$35,000,000 for the Secretary of Commerce, through the  
22 Administrator of the National Oceanic and Atmospheric  
23 Administration, to carry out the following activities in accordance  
24 with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.):

25 (A) Gravel and rearing area additions and habitat restoration  
26 to the Sacramento River to benefit Chinook salmon and  
27 steelhead trout.

28 (B) Alternative methods, models, and equipment to improve  
29 temperature modeling and related forecasted information for  
30 purposes of predicting impacts to salmon and salmon habitat as  
31 a result of water management at Shasta.

32 (C) Methods to improve the Delta salvage systems, including  
33 alternative methods to redeposit salvaged salmon smolts and  
34 other fish from the Delta in a manner that reduces predation  
35 losses.

36 (2) \$6,000,000 for the Secretary of the Interior to conduct the Delta  
37 smelt distribution study referenced in section 301.

38 (c) Commencement.—If the Administrator of the National Oceanic and

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1 Atmospheric Administration determines that a proposed activity is feasible  
2 and beneficial for protecting and recovering a fish population, the  
3 Administrator shall commence implementation of the activity by not later  
4 than 1 year after the date of enactment of this Act.

5 (d) Consultation.—The Administrator shall take such steps as are  
6 necessary to partner with, and coordinate the efforts of, the Department of  
7 the Interior, the Department of Commerce, and other relevant Federal  
8 departments and agencies to ensure that all Federal reviews, analyses,  
9 opinions, statements, permits, licenses, and other approvals or decisions  
10 required under Federal law are completed on an expeditious basis,  
11 consistent with Federal law.

12 (e) Trap and Barge Pilot Program.—

13 (1) IN GENERAL.—The Department of Commerce, in collaboration  
14 with the Department of the Interior, the California Department of  
15 Fish and Wildlife, applicable water agencies, and other interested  
16 parties, shall design, permit, implement, and evaluate a pilot program  
17 to test the efficacy of an experimental trap and barge program to  
18 improve survival of juvenile salmonids emigrating from the San  
19 Joaquin watershed through the Delta.

20 (2) PLAN.—

21 (A) WORKING GROUP.—Not later than 30 days after the date  
22 of enactment of this Act, the Assistant Administrator and the  
23 Commissioner shall convene a working group, to be comprised  
24 of representatives of relevant agencies and other interested  
25 parties, to develop and execute a plan for the design, budgeting,  
26 implementation, and evaluation of the pilot program under this  
27 subsection, using such existing expertise regarding trap and  
28 barge programs as may be available.

29 (B) REQUIREMENTS.—The plan under this paragraph shall—

30 (i) include a schedule and budget for the pilot program;  
31 and

32 (ii) identify the responsible parties for each element of  
33 the program.

34 (3) IMPLEMENTATION.—The Assistant Administrator and the  
35 Commissioner shall seek to commence implementation of the pilot  
36 program under this subsection during calendar year 2016, if  
37 practicable.

38 (4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
39 be appropriated to carry out this subsection \$4,000,000.

40 (f) Conservation Fish Hatcheries.—

41 (1) IN GENERAL.—Not later than 2 years after the date of enactment

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of this Act, the Secretaries of the Interior and Commerce, in coordination with the Director of the California Department of Fish and Wildlife, shall develop and implement as necessary the expanded use of conservation hatchery programs to enhance, supplement, and rebuild Delta smelt and Endangered Species Act-listed fish species under the smelt and salmonid biological opinions.

(2) REQUIREMENTS.—The conservation hatchery programs established under paragraph (1) and the associated hatchery and genetic management plans shall be designed—

(A) to benefit, enhance, support, and otherwise recover naturally spawning fish species to the point where the measures provided under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) are no longer necessary; and

(B) to minimize adverse effects to Central Valley Project and State Water Project operations.

(3) PRIORITY; COOPERATIVE AGREEMENTS.—In implementing this section, the Secretaries of the Interior and Commerce—

(A) shall give priority to existing and prospective hatchery programs and facilities within the Delta and the riverine tributaries thereto; and

(B) may enter into cooperative agreements for the operation of conservation hatchery programs with States, Indian tribes, and other nongovernmental entities for the benefit, enhancement, and support of naturally spawning fish species.

(g) Acquisition of Land, Water, or Interests From Willing Sellers for Environmental Purposes in California.—

(1) IN GENERAL.—The Secretary of the Interior is authorized to acquire by purchase, lease, donation, or otherwise, land, water, or interests in land or water from willing sellers in California—

(A) to benefit listed or candidate species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the California Endangered Species Act (California Fish and Game Code sections 2050 through 2116);

(B) to meet requirements of, or otherwise provide water quality benefits under, the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or the Porter Cologne Water Quality Control Act (division 7 of the California Water Code); or

(C) for protection and enhancement of the environment, as determined by the Secretary of the Interior.

(2) FINANCIAL ASSISTANCE.—In implementing this section, the Secretary of the Interior is authorized to provide financial assistance

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to the State of California or otherwise hold such interests in joint ownership with the State of California based on a cost share deemed appropriate by the Secretary.

(3) TREATMENT.—Any expenditures under this subsection shall be nonreimbursable and nonreturnable to the United States.

### SEC. 202. ACTIONS TO BENEFIT REFUGES.

(a) In General.—In addition to funding under section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726), there is authorized to be appropriated to the Secretary of the Interior \$2,000,000 for each of fiscal years 2016 through 2020 for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act (Public Law 102–575; 106 Stat. 4722).

(b) Cost-sharing.—

(1) FEDERAL SHARE.—The Federal share of the cost of carrying out an activity described in this section shall be not more than 50 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of carrying out an activity described in this section—

(A) shall be not less than 50 percent; and

(B) may be provided in cash or in-kind.

### SEC. 203. NON-FEDERAL PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN STANISLAUS RIVER.

(a) Definition of District.—In this section, the term “district” means—

(1) the Oakdale Irrigation District of the State of California; and

(2) the South San Joaquin Irrigation District of the State of California.

(b) Establishment.—The Secretary of Commerce, acting through the Assistant Administrator of the National Marine Fisheries Service, and the districts, in consultation with the Director of the California Department of Fish and Wildlife, shall jointly establish and conduct a nonnative predator research and pilot fish removal program to study the effects of removing from the Stanislaus River—

(1) nonnative striped bass, smallmouth bass, largemouth bass, black bass; and

(2) other nonnative predator fish species.

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1 (c) Requirements.—The program under this section shall—

2 (1) be scientifically based, with research questions determined  
3 jointly by—

4 (A) National Marine Fisheries Service scientists; and

5 (B) technical experts of the districts;

6 (2) include methods to quantify by, among other things, evaluating  
7 the number of juvenile anadromous fish that migrate past the rotary  
8 screw trap located at Caswell—

9 (A) the number and size of predator fish removed each year;  
10 and

11 (B) the impact of the removal on—

12 (i) the overall abundance of predator fish in the  
13 Stanislaus River; and

14 (ii) the populations of juvenile anadromous fish in the  
15 Stanislaus River;

16 (3) among other methods, consider using wire fyke trapping,  
17 portable resistance board weirs, and boat electrofishing; and

18 (4) be implemented as quickly as practicable after the date of  
19 issuance of all necessary scientific research permits.

20 (d) Management.—The management of the program shall be the joint  
21 responsibility of the Assistant Administrator and the districts, which  
22 shall—

23 (1) work collaboratively to ensure the performance of the program;  
24 and

25 (2) discuss and agree on, among other things—

26 (A) qualified scientists to lead the program;

27 (B) research questions;

28 (C) experimental design;

29 (D) changes in the structure, management, personnel,  
30 techniques, strategy, data collection and access, reporting, and  
31 conduct of the program; and

32 (E) the need for independent peer review.

33 (e) Conduct.—

34 (1) IN GENERAL.—For each applicable calendar year, the districts,  
35 on agreement of the Assistant Administrator, may elect to conduct  
36 the program under this section using—

37 (A) the personnel of the Assistant Administrator or districts;

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- 1 (B) qualified private contractors hired by the districts;
- 2 (C) personnel of, on loan to, or otherwise assigned to the
- 3 National Marine Fisheries Service; or
- 4 (D) a combination of the individuals described in
- 5 subparagraphs (A) through (C).
- 6 (2) PARTICIPATION BY NATIONAL MARINE FISHERIES SERVICE.—
- 7 (A) IN GENERAL.—If the districts elect to conduct the program
- 8 using district personnel or qualified private contractors hired
- 9 under subparagraph (A) or (B) of paragraph (1), the Assistant
- 10 Administrator may assign an employee of, on loan to, or
- 11 otherwise assigned to the National Marine Fisheries Service, to
- 12 be present for all activities performed in the field to ensure
- 13 compliance with subsection (d).
- 14 (B) COSTS.—The districts shall pay the cost of participation
- 15 by the employee under subparagraph (A), in accordance with
- 16 subsection (f).
- 17 (3) TIMING OF ELECTION.—The districts shall notify the Assistant
- 18 Administrator of an election under paragraph (1) by not later than
- 19 October 15 of the calendar year preceding the calendar year for
- 20 which the election applies.
- 21 (f) Funding.—
- 22 (1) IN GENERAL.—The districts shall be responsible for 100 percent
- 23 of the cost of the program.
- 24 (2) CONTRIBUTED FUNDS.—The Secretary of Commerce may
- 25 accept and use contributions of funds from the districts to carry out
- 26 activities under the program.
- 27 (3) ESTIMATION OF COST.—
- 28 (A) IN GENERAL.—Not later than December 1 of each year of
- 29 the program, the Secretary of Commerce shall submit to the
- 30 districts an estimate of the cost to be incurred by the National
- 31 Marine Fisheries Service for the program during the following
- 32 calendar year, if any, including the cost of any data collection
- 33 and posting under subsection (g).
- 34 (B) FAILURE TO FUND.—If an amount equal to the estimate of
- 35 the Secretary of Commerce is not provided through
- 36 contributions pursuant to paragraph (2) before December 31 of
- 37 that calendar year—
- 38 (i) the Secretary shall have no obligation to conduct the
- 39 program activities otherwise scheduled for the following
- 40 calendar year until the amount is contributed by the

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1 districts; and

2 (ii) the districts may not conduct any aspect of the  
3 program until the amount is contributed by the districts.

4 (4) ACCOUNTING.—

5 (A) IN GENERAL.—Not later than September 1 of each year,  
6 the Secretary of Commerce shall provide to the districts an  
7 accounting of the costs incurred by the Secretary for the  
8 program during the preceding calendar year.

9 (B) EXCESS AMOUNTS.—If the amount contributed by the  
10 districts pursuant to paragraph (2) for a calendar year was  
11 greater than the costs incurred by the Secretary of Commerce  
12 during that year, the Secretary shall—

13 (i) apply the excess amounts to the cost of activities to be  
14 performed by the Secretary under the program, if any,  
15 during the following calendar year; or

16 (ii) if no such activities are to be performed, repay the  
17 excess amounts to the districts.

18 (g) Publication and Evaluation of Data.—

19 (1) IN GENERAL.—All data generated through the program,  
20 including by any private consultants, shall be routinely provided to  
21 the Assistant Administrator.

22 (2) INTERNET.—Not later than the 15th day of each month of the  
23 program, the Assistant Administrator shall publish on the Internet  
24 website of the National Marine Fisheries Service a tabular summary  
25 of the raw data collected under the program during the preceding  
26 month.

27 (3) REPORT.—On completion of the program, the Assistant  
28 Administrator shall prepare a final report evaluating the effectiveness  
29 of the program, including recommendations for future research and  
30 removal work.

31 (h) Consistency With Law.—

32 (1) IN GENERAL.—The programs in this section and section 204 are  
33 found to be consistent with the requirements of the Central Valley  
34 Project Improvement Act (Public Law 102–575; 106 Stat. 4706).

35 (2) LIMITATION.—No provision, plan, or definition under that Act,  
36 including section 3406(b)(1) of that Act (Public Law 102–575; 106  
37 Stat. 4714), shall be used—

38 (A) to prohibit the implementation of the programs in this  
39 section and section 204; or

40 (B) to prevent the accomplishment of the goals of the



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1 programs.

2 (3) STATE LAW.—The Secretary of the Interior, the Secretary of  
3 Commerce, and the participating districts shall comply with  
4 applicable requirements of State law with respect to the program  
5 under this subsection.

### 6 SEC. 204. PILOT PROJECTS TO IMPLEMENT 7 CALFED INVASIVE SPECIES PROGRAM.

8 (a) In General.—Not later than January 1, 2017, the Secretary of the  
9 Interior, in collaboration with the Secretary of Commerce, the Director of  
10 the California Department of Fish and Wildlife, and other relevant  
11 agencies and interested parties, shall establish and carry out pilot projects  
12 to implement the invasive species control program under section  
13 103(d)(6)(A)(iv) of Public Law 108–361 (118 Stat. 1690).

14 (b) Requirements.—The pilot projects under this section shall—

15 (1) seek to reduce invasive aquatic vegetation (such as water  
16 hyacinth), predators, and other competitors that contribute to the  
17 decline of native listed pelagic and anadromous species that occupy  
18 the Sacramento and San Joaquin Rivers and their tributaries and the  
19 Delta; and

20 (2) remove, reduce, or control the effects of species including  
21 Asiatic clams, silversides, gobies, Brazilian water weed, largemouth  
22 bass, smallmouth bass, striped bass, crappie, bluegill, white and  
23 channel catfish, zebra and quagga mussels, and brown bullheads.

24 (c) Emergency Environmental Reviews.—To expedite environmentally  
25 beneficial programs in this title for the conservation of threatened and  
26 endangered species, the Secretaries of the Interior and Commerce shall  
27 consult with the Council on Environmental Quality in accordance with  
28 section 1506.11 of title 40, Code of Federal Regulations (or successor  
29 regulations), to develop alternative arrangements to comply with the  
30 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for  
31 those programs.

### 32 TITLE III—CALIFORNIA EMERGENCY 33 DROUGHT RELIEF AND OPERATIONAL 34 FLEXIBILITY

### 35 SEC. 301. TAKING INTO ACCOUNT 36 INCREASED REAL-TIME MONITORING 37 AND UPDATED SCIENCE.

38 (a) Smelt Biological Opinion.—The Director shall use the best scientific



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1 and commercial data available to implement, continuously evaluate, and  
2 refine or amend, as appropriate, the reasonable and prudent alternative  
3 described in the smelt biological opinion.

4 (b) Increased Monitoring to Inform Real-time Operations.—

5 (1) IN GENERAL.—The Secretary of the Interior shall conduct  
6 additional surveys, on an annual basis at the appropriate time of year  
7 based on environmental conditions, in collaboration with interested  
8 stakeholders regarding the science of the Delta in general, and to  
9 enhance real time decisionmaking in particular, working in close  
10 coordination with relevant State authorities.

11 (2) REQUIREMENTS.—In carrying out this subsection, the Secretary  
12 of the Interior shall use—

13 (A) the most appropriate and accurate survey methods  
14 available for the detection of Delta smelt to determine the extent  
15 to which adult Delta smelt are distributed in relation to certain  
16 levels of turbidity or other environmental factors that may  
17 influence salvage rate; and

18 (B) results from appropriate surveys for the detection of Delta  
19 smelt to determine how the Central Valley Project and State  
20 Water Project may be operated more efficiently to maximize  
21 fish and water supply benefits.

22 (3) WINTER MONITORING.—During the period between December  
23 1 and March 31, if suspended sediment loads enter the Delta from the  
24 Sacramento River, and the suspended sediment loads appear likely to  
25 raise turbidity levels in the Old River north of the export pumps from  
26 values below 12 Nephelometric Turbidity Units (NTUs) to values  
27 above 12 NTUs, the Secretary of the Interior shall—

28 (A) conduct daily monitoring using appropriate survey  
29 methods at locations including the vicinity of Station 902 to  
30 determine the extent to which adult Delta smelt are moving with  
31 turbidity toward the export pumps; and

32 (B) use results from the monitoring under subparagraph (A) to  
33 determine how increased trawling can inform daily real-time  
34 Central Valley Project and State Water Project operations to  
35 maximize fish and water supply benefits.

36 (c) Periodic Review of Monitoring.—Not later than 1 year after the date  
37 of enactment of this Act, the Secretary of the Interior shall—

38 (1) evaluate whether the monitoring program under subsection (b),  
39 combined with other monitoring programs for the Delta, is providing  
40 sufficient data to inform Central Valley Project and State Water  
41 Project operations to maximize the water supply for fish and water  
42 supply benefits; and

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1 (2) determine whether the monitoring efforts should be changed in  
2 the short or long term to provide more useful data.

3 (d) Delta Smelt Distribution Study.—

4 (1) IN GENERAL.—Not later than March 15, 2019, the Secretary of  
5 the Interior shall—

6 (A) complete studies, to be initiated by not later than 90 days  
7 after the date of enactment of this Act, designed—

8 (i) to understand the location and distribution of Delta  
9 smelt throughout the range of the Delta smelt; and

10 (ii) to determine potential methods to minimize the  
11 effects of Central Valley Project and State Water Project  
12 operations on the Delta smelt;

13 (B) based on the best available science, if appropriate and  
14 practicable, implement new targeted sampling and monitoring of  
15 Delta smelt in order to maximize fish and water supply benefits  
16 prior to completion of the study under subparagraph (A);

17 (C) to the maximum extent practicable, use new technologies  
18 to allow for better tracking of Delta smelt, such as acoustic  
19 tagging, optical recognition during trawls, and fish detection  
20 using residual deoxyribonucleic acid (DNA); and

21 (D) if new sampling and monitoring is not implemented under  
22 subparagraph (B), provide a detailed explanation of the  
23 determination of the Secretary of the Interior that no change is  
24 warranted.

25 (2) CONSULTATION.—In determining the scope of the studies under  
26 this subsection, the Secretary of the Interior shall consult with—

27 (A) Central Valley Project and State Water Project water  
28 contractors and public water agencies;

29 (B) other public water agencies;

30 (C) the California Department of Fish and Wildlife and the  
31 California Department of Water Resources; and

32 (D) nongovernmental organizations.

33 (e) Scientifically Supported Implementation of OMR Flow  
34 Requirements.—

35 (1) ENVIRONMENTAL PROTECTION MANDATE.—The Secretaries of  
36 the Interior and Commerce shall take no action pursuant to this Act  
37 that would cause additional adverse effects on the listed fish species  
38 beyond the range of effects anticipated to occur to the listed fish  
39 species for the duration of the applicable biological opinion, using the  
40 best scientific and commercial data available.

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1           (2) REAL-TIME MANAGEMENT TO ACHIEVE MULTIPLE GOALS.—  
2           Building upon previous drought operations in calendar years 2014  
3           and 2015, the Secretaries of the Interior and Commerce shall monitor  
4           in real time to determine the location and densities of listed fish  
5           species relative to the pumps, Delta conditions, and other relevant  
6           factors, in order to identify more accurately and precisely—

7                   (A) opportunities to increase water pumping without violating  
8                   the standard in paragraph (1) or other applicable environmental  
9                   laws and regulations; and

10                   (B) circumstances where it is necessary to decrease water  
11                   pumping to protect listed fish species.

12           (3) MANAGEMENT.—In implementing the smelt biological opinion  
13           and the salmonid biological opinion, the Secretaries of the Interior  
14           and Commerce shall manage the OMR in accordance with those  
15           opinions to maximize water supplies for the Central Valley Project  
16           and State Water Project, to the extent consistent with paragraph (1).

17           (4) REVERSE FLOW.—

18                   (A) IN GENERAL.—With respect to the management of reverse  
19                   flow in the OMR under the smelt biological opinion, the  
20                   Secretary of the Interior shall implement the relevant provisions  
21                   of the smelt biological opinion to maximize Central Valley  
22                   Project and State Water Project water supplies, to the extent  
23                   consistent with paragraph (1).

24                   (B) REQUIREMENTS.—If the Secretary determines to manage  
25                   rates of pumping at the C.W. “Bill” Jones and the Harvey O.  
26                   Banks pumping plants in the southern Delta to achieve a reverse  
27                   OMR flow rate less negative than -5,000 cubic feet per second,  
28                   the Secretary shall—

29                           (i) document in writing any significant facts regarding  
30                           real-time conditions relevant to the determinations of OMR  
31                           reverse flow rates, including—

32                                   (I) targeted real-time fish monitoring in the Old  
33                                   River pursuant to this section, including monitoring in  
34                                   the vicinity of Station 902; and

35                                   (II) near-term forecasts with available salvage  
36                                   models under prevailing conditions of the effects on  
37                                   Delta smelt of OMR flow of -5,000 cubic feet per  
38                                   second; and

39                           (ii) explain in writing why any decision to manage OMR  
40                           reverse flow at rates less negative than -5,000 cubic feet per  
41                           second is necessary to comply with the environmental  
42                           standard in subparagraph (e)(1), after considering relevant

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1 factors such as—

2 (I) the distribution of Delta smelt throughout the  
3 Delta;

4 (II) the potential effects of high entrainment risk on  
5 subsequent Delta smelt abundance;

6 (III) the water temperature;

7 (IV) other significant factors relevant to the  
8 determination, as required by applicable Federal or  
9 State laws;

10 (V) turbidity; and

11 (VI) whether any alternative measures could have a  
12 substantially lesser water supply impact.

13 (5) IMMEDIATE ACTION.—Nothing in this section shall prevent the  
14 Secretaries of the Interior or Commerce from taking immediate  
15 action to reduce pumping if necessary to do so to comply with the  
16 Endangered Species Act, its implementing regulations, or to avoid  
17 additional adverse effects on the listed fish species beyond the range  
18 of effects anticipated to occur to the listed fish species for the  
19 duration of the applicable biological opinion.

20 (f) First Sediment Flush.—During the first flush of sediment out of the  
21 Delta in each water year, based on objective evidence and notwithstanding  
22 subsection (e), the Secretary of the Interior may manage OMR flow,  
23 pursuant to the portion of the smelt biological opinion that protects adult  
24 Delta smelt from the first flush (Action 1 of the Reasonable and Prudent  
25 Alternative Component 1), at rates less negative than -5,000 cubic feet per  
26 second for the shortest time period necessary to avoid movement of adult  
27 Delta smelt to areas in the southern Delta that would be likely to increase  
28 entrainment at any Central Valley Project or State Water Project pumping  
29 plant.

30 (g) Construction.—The Secretaries of the Interior and Commerce  
31 may—

32 (1) implement subsection (e) building on, and taking into account  
33 the effects of, previous operations in the 2014 and 2015 water years;  
34 and

35 (2) use the results of monitoring through early warning surveys to  
36 make real-time operational decisions under the applicable biological  
37 opinion.

38 (h) Calculation of Reverse Flow in OMR.—Not later than 180 days  
39 after the date of enactment of this Act, the Secretary, in consultation with  
40 the California Department of Water Resources, consistent with the smelt  
41 biological opinion and the salmonid biological opinion, shall—

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(1) review, including seeking public comment regarding, whether any revision to the method used to calculate reverse flow in the OMR for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion for the purpose of using the best available science and monitoring to maximize fish and water supply benefits is warranted; and

(2) implement the revised method to calculate reverse flow in the OMR pursuant to paragraph (1).

(i) Successor Biological Opinions.—The Secretaries of the Interior and Commerce shall apply the provisions of this Act to successor biological opinions to the salmonid biological opinion and the smelt biological opinion, to the extent that the Secretaries of the Interior and Commerce determine to be consistent with—

(1) section 701(a)(3); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the regulations implementing that Act.

## SEC. 302. EMERGENCY OPERATIONS.

(a) Water Supplies.—

(1) IN GENERAL.—The Secretaries of the Interior and Commerce shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal, and industrial contractors, water service or repayment contractors, water rights settlement contractors, exchange contractors, refuge contractors, and State Water Project contractors, by approving, in accordance with applicable Federal and State laws (including regulations), operations or temporary projects to provide additional water supplies as quickly as practicable, based on available information, to address the emergency conditions.

(2) APPLICATION.—

(A) IN GENERAL.—Subject to subparagraph (B), paragraph (1) applies to any operation or temporary project involving the Klamath Project, if the project or operation would benefit Federal water contractors or otherwise alleviate drought conditions in the State of California.

(B) EFFECT.—Nothing in this subsection limits or affects the ability of the Secretaries of the Interior and Commerce to meet the legal obligations of the Secretary, including all tribal trust obligations.

(b) Administration.—In carrying out subsection (a), the Secretaries of the Interior and Commerce shall, in accordance with applicable laws (including regulations)—

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(1)(A) in close coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement a pilot project to test and evaluate the ability to operate the Delta cross-channel gates daily or as otherwise may be appropriate to keep the gates open to the maximum extent practicable to protect out-migrating salmonids, manage salinities in the interior Delta and any other water quality issues, and maximize Central Valley Project and State Water Project pumping, subject to the condition that the pilot project shall be designed and implemented consistent with operational criteria and monitoring criteria required by the California State Water Resources Control Board, including its order, "Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions", effective on January 31, 2014 (or a successor order); and

(B) design, implement, and evaluate those real-time monitoring capabilities to enable effective real-time operations of the cross-channel in order efficiently to meet the objectives described in subparagraph (A);

(2) with respect to the operation of the Delta cross-channel gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply benefits;

(3) collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough and the Delta cross-channel gate to protect migrating salmonids, consistent with knowledge gained from related activities carried out during 2014 and 2015;

(4) not later than May 15, 2016, submit to the Committees on Energy and Natural Resources and Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives a notice and explanation regarding the extent to which the gates are able to remain open pursuant to paragraphs (1) through (3);

(5) implement turbidity control strategies that may allow for increased water deliveries while avoiding jeopardy to adult Delta smelt due consistent with the smelt biological opinion;

(6) adopt a 1:1 inflow-to-export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period beginning on April 1 and ending on May 31, that

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1 results from the voluntary sale, transfer, or exchange, unless the  
2 Secretaries of the Interior and Commerce determine in writing that  
3 the ratio will cause additional adverse effects on any salmonid listed  
4 fish species beyond the range of effects anticipated to occur to the  
5 listed fish species for the duration of the salmonid biological opinion  
6 using the best scientific and commercial data available and subject to  
7 the condition that any individual sale, transfer, or exchange using that  
8 ratio may only proceed if—

9 (A) the Secretary of the Interior determines that the  
10 environmental effects of the proposed sale, transfer, or exchange  
11 are consistent with effects permitted under applicable law  
12 (including the Endangered Species Act (16 U.S.C. 1531 et seq.),  
13 the Federal Water Pollution Control Act (33 U.S.C. 1381 et  
14 seq.), and the Porter-Cologne Water Quality Control Act  
15 (California Water Code 13000 et seq.));

16 (B) Delta conditions are suitable to allow movement of the  
17 acquired, transferred, or exchanged water through the Delta, in  
18 accordance with existing Central Valley Project and State Water  
19 Project permitted water rights and the requirements of section  
20 3405(a)(1)(H) of the Central Valley Project Improvement Act  
21 (Public Law 102–575; 106 Stat. 4711); and

22 (C) the voluntary sale, transfer, or exchange of water results  
23 in flow that is in addition to flow that otherwise would occur in  
24 the absence of the voluntary sale, transfer, or exchange;

25 (7)(A) issue all necessary permit decisions under the authority of  
26 the Secretaries of the Interior and Commerce by not later than 60  
27 days after the date of receipt of a completed application by the State  
28 of California to place and use temporary barriers or operable gates in  
29 Delta channels to improve water quantity and quality for State Water  
30 Project and Central Valley Project south-of-Delta water contractors  
31 and other water users, which barriers or gates shall provide benefits  
32 for species protection and in-Delta water user water quality, subject  
33 to the condition that the barriers or gates shall be designed so that, if  
34 practicable, formal consultations under section 7 of the Endangered  
35 Species Act of 1973 (16 U.S.C. 1536) are not necessary; or

36 (B) take a longer period to issue the permit decisions described in  
37 subparagraph (A) only if the Secretaries of the Interior and  
38 Commerce determine in writing that an environmental impact  
39 statement is needed for the proposal to comply with the National  
40 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

41 (8) allow and facilitate, consistent with existing priorities, water  
42 transfers through the C.W. “Bill” Jones Pumping Plant or the Harvey  
43 O. Banks Pumping Plant during the period beginning on April 1 and



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ending on November 30, subject to the condition that the transfers—

(A) are consistent with applicable Federal and State laws (including regulations), including the California Environmental Quality Act (California Public Resources Code 21000–21177); and

(B) are consistent with the smelt biological opinion and the salmonid biological opinion;

(9) require the Director and the Commissioner—

(A)(i) to determine whether a written transfer proposal is complete by not later than 30 days after the date of submission of the proposal; and

(ii) if the proposal is determined to be incomplete, to State with specificity what shall be supplemented or revised to complete the proposal; and

(B)(i) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests in the State of California by—

(I) not later than 30 days after the date of receipt of such a request; or

(II) such later date as the Director or the Commissioner determines to be necessary, only if the Director or the Commissioner determines in writing that an environmental impact statement is needed for the proposal to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) approve any water transfer request described in clause (i) to maximize the quantity of water supplies, subject to the condition that actions associated with the water transfer comply with applicable Federal and State laws (including regulations) and are consistent with—

(I) existing permitted water rights; and

(II) the requirements of section 3405(a)(1)(H) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4711);

(10) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water



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supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State of California and elsewhere;

(11) pursuant to the research and adaptive management provisions of the smelt biological opinion and the salmonid biological opinion—

(A) use all available scientific tools to identify any changes to real-time operations of Bureau of Reclamation, State of California, or local water projects that could result in the availability of additional water supplies; and

(B) determine whether alternative operational or other management measures would meet applicable regulatory requirements for listed species while maximizing water supplies and water supply reliability; and

(12) continue to vary the averaging period of the maximum percent of Delta Inflow Diverted (Delta export-inflow ratio), to the extent consistent with any applicable California Water Resources Control Board orders under decision D-1641 (which sets water quality objectives for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary) to operate—

(A) to a ratio using a 3-day averaging period on the rising limb of a Delta inflow hydrograph; and

(B) to a 14-day averaging period on the falling limb of the Delta inflow hydrograph.

(c) Other Agencies.—To the extent that a Federal department or agency other than the Department of the Interior or the Department of Commerce has a role in approving a project described in subsection (a) or (b), this section shall apply to the Federal department or agency.

(d) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request of the Governor of California, the Secretaries of the Interior and Commerce shall use the expedited procedures under this subsection to make final decisions relating to Federal or federally approved projects or operational changes proposed pursuant to subsections (a) and (b) to provide additional water supplies or otherwise address emergency drought conditions.

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request of the Governor of California, the Secretaries of the Interior and Commerce or the head of another Federal department or agency responsible for carrying out a review of a project, as applicable, shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies or otherwise address emergency

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1 drought conditions.

2 (B) MEETING.—A meeting under subparagraph (A) shall  
3 convene not later than 7 days after the date of receipt of the  
4 meeting request.

5 (3) NOTIFICATION.—On receipt of a request for a meeting under  
6 this subsection, the Secretary of the Interior shall notify the heads of  
7 all relevant Federal departments and agencies of the request,  
8 including a description of—

9 (A) the project to be reviewed; and

10 (B) the date for the meeting.

11 (4) DECISION.—Not later than 10 days after the date on which a  
12 meeting is requested under paragraph (2), the head of the relevant  
13 Federal agency shall issue a final decision on the project.

14 (5) MEETING CONVENED BY SECRETARY.—The Secretary of the  
15 Interior may convene a final project decision meeting under this  
16 subsection at any time, at the discretion of the Secretary, regardless  
17 of whether a meeting is requested under paragraph (2).

18 (6) LIMITATION.—The expedited procedures under this subsection  
19 apply only—

20 (A) to proposed new Federal projects or operational changes  
21 pursuant to subsection (a) or (b); and

22 (B) to the extent the procedures are consistent with applicable  
23 laws (including regulations).

24 (e) Drought Plan.—For any year during which this section is in effect,  
25 the Secretaries of the Interior and Commerce, in consultation with  
26 appropriate State officials, shall develop a drought operations plan that is  
27 consistent with this Act and other applicable Federal and State laws,  
28 including provisions intended to provide additional water supplies that  
29 could be of assistance during the drought in existence on the date of  
30 enactment of this Act.

### 31 SEC. 303. TEMPORARY OPERATIONAL 32 FLEXIBILITY TO CAPTURE PEAK FLOWS 33 FROM WINTER STORMS.

34 (a) Environmental Protection Mandate.—The Secretaries of the Interior  
35 and Commerce shall take no action pursuant to this Act that would cause  
36 additional adverse effects on the listed fish species beyond the range of  
37 effects anticipated to occur to the listed fish species for the duration of the  
38 applicable biological opinion, using the best scientific and commercial  
39 data available.

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(b) Real-time Management to Achieve Multiple Goals.—Pursuant to the adaptive management provisions of the smelt biological opinion and the salmonid biological opinion, the Secretaries of the Interior and Commerce shall monitor in real time to determine the location and densities of listed fish species relative to the pumps and Delta conditions, in order to identify more accurately and precisely—

(1) opportunities to increase water pumping without violating the standard in subsection (a) or other environmental laws and regulations; and

(2) circumstances where it is necessary to decrease water pumping to protect listed fish species.

(c) Requirement.—When consistent with the environmental protection mandate in subsection (a) and other environmental protections under subsection (e), the Secretaries of the Interior and Commerce, through the drought contingency plans, shall evaluate and may authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in daily average OMR flows more negative than -5,000 cubic feet per second (based on United States Geological Survey gauges on OMR) to capture peak flows during storm-related events, in accordance with subsections (d), (e), and (f).

(d) Factors to Be Considered.—In determining additional adverse effects on any listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the smelt biological opinion or salmonid biological opinion, using the best scientific and commercial data available, the Secretaries of the Interior and Commerce may consider the following factors:

(1) The real-time distribution of listed species.

(2) Relevant physical parameters including projected inflows, turbidity, salinities, and tidal cycles.

(3) Any other factor under the relevant biological opinion.

(e) Other Environmental Protections.—

(1) STATE LAW.—The actions of the Secretaries of the Interior and Commerce pursuant to this section shall be consistent with applicable regulatory requirements under State law.

(2) FIRST SEDIMENT FLUSH.—During the first flush of sediment out of the Delta during each water year, subject to the condition that the determination is based on objective evidence, OMR flow may be pursuant to the salmonid biological opinion and Action 1 of Reasonable and Prudent Alternative Component 1 in the smelt biological opinion at rates less negative than -5,000 cubic feet per second for the shortest time period necessary to avoid movement of adult Delta smelt to areas in the southern Delta that would be likely

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to increase entrainment at Central Valley Project or State Water  
Project pumping plants.

(3) APPLICABILITY.—

(A) IN GENERAL.—This section on capturing peak flows from  
winter storms shall not affect the application of the salmonid  
biological opinion during the period beginning on April 1 and  
ending on May 31, unless the Secretary of Commerce  
determines that this section can be applied during part or all of  
that time period to provide emergency water supply relief  
without resulting in additional adverse effects beyond those  
anticipated to occur for the duration the salmonid biological  
opinion.

(B) THROUGH-DELTA WATER TRANSFERS.—In addition to any  
other actions to benefit water supply, the Secretaries of the  
Interior and Commerce shall consider allowing through-Delta  
water transfers to occur during the period referred to in  
subparagraph (A), in accordance with section 302(b)(8).

(C) CVPIA.—A water transfer solely or exclusively through  
the State Water Project shall not be required to be consistent  
with section 3405(a)(1)(H) of the Central Valley Project  
Improvement Act (Public Law 102–575; 106 Stat. 4711).

(4) MONITORING.—In implementing this section, the  
Commissioner, in coordination with the Director, the Assistant  
Administrator, and the California Department of Fish and Wildlife,  
shall carry out a monitoring program and other data gathering  
activities—

(A) to ensure incidental take levels are not exceeded; and

(B) to identify potential negative impacts, if any.

(f) Effect of High Outflows.—When exercising their authorities  
pursuant to drought contingency plans to capture peak flows pursuant to  
subsection (c), the Secretaries of the Interior and Commerce shall not  
count any day during that period toward the 5-day or 14-day running  
averages of tidally filtered daily OMR flow requirements under the smelt  
biological opinion or the salmonid biological opinion unless doing so is  
required to avoid additional adverse effects on listed fish species beyond  
the range of effects anticipated to occur to the listed fish species for the  
duration of the biological opinions, using the best scientific and  
commercial data available.

## SEC. 304. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and

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quickly to deliver water that is needed to address emergency drought conditions in the State of California, the head of each applicable Federal department or agency shall, in carrying out this title, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (or successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

### SEC. 305. LEVEL OF DETAIL REQUIRED FOR ANALYSIS.

In articulating the determinations and demonstrations required under this title, the Secretaries of the Interior and Commerce shall—

(1) fully satisfy the requirements of this title using such quantity of written supporting detail as is reasonable within the timeframe permitted for timely decisionmaking in response to changing conditions in the Delta; and

(2) make the decision document available on a publicly accessible Internet website.

## TITLE IV—WATER RIGHTS

### SEC. 401. OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts.—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act regarding potential impacts to any consistency determination for operations of the State Water Project issued pursuant to section 2080.1 of the California Fish and Game Code.

(b) Additional Yield.—If, as a result of the application of this Act, the California Department of Fish and Wildlife—

(1) determines that operations of the State Water Project are inconsistent with the consistency determinations issued pursuant to California Fish and Game Code section 2080.1 for operations of the State Water Project; or

(2) requires take authorization under California Fish and Game Code section 2081 for operation of the State Water Project,

in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a result, Central Valley Project yield is greater than it otherwise would have been, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset the reduced

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water supply, provided that if it is necessary to reduce water supplies for any Central Valley Project authorized uses or contractors to make available to the State Water Project that additional yield, such reductions shall be applied to those uses or contractors that benefit from that increased yield.

(c) Notification Related to Environmental Protections.—The Secretaries of the Interior and Commerce shall—

(1) notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented; and

(2) confirm that those changes are consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) Savings.—Nothing in this section shall have any effect on the application of the California Endangered Species Act (California Fish and Game Code sections 2050 through 2116).

## SEC. 402. AREA OF ORIGIN AND WATER RIGHTS PROTECTIONS.

(a) In General.—In carrying out this Act, the Secretaries of the Interior and Commerce shall not take any action that—

(1) diminishes, impairs, or otherwise affects in any manner any area of origin, watershed of origin, county of origin, or any other water rights protection, including rights to water appropriated before December 19, 1914, provided under California law;

(2) limits, expands, or otherwise affects the application of section 10505, 10505.5, 11128, 11460, 11461, 11462, 11463, or 12200 through 12220 of the California Water Code or any other provision of California water rights law, without respect to whether such a provision is specifically referred to in this Act; or

(3) diminishes, impairs, or otherwise affects in any manner any water rights or water rights priorities under applicable law.

(b) Effect of Act.—Nothing in this Act—

(1) affects or modifies any obligation of the Secretary of the Interior under section 8 of the Act of June 17, 1902 (32 Stat. 390, chapter 1093); or

(2) diminishes, impairs, or otherwise affects in any manner any project purposes or priorities for the allocation, delivery, or use of water under applicable law, including the project purposes and priorities established under sections 3402 and section 3406 of the Central Valley Project Improvement Act (Public Law 102–575; 106

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1 Stat. 4706).

### 2 SEC. 403. NO REDIRECTED ADVERSE 3 IMPACTS.

4 (a) Applicability.—

5 (1) IN GENERAL.—The Secretaries of the Interior and Commerce  
6 shall not carry out any specific action pursuant to this Act that will  
7 directly or, through State agency action, indirectly result in the  
8 involuntary reduction of water supply to an individual, district, or  
9 agency that has in effect a contract for water with the State Water  
10 Project or the Central Valley Project, including settlement and  
11 exchange contracts, refuge contracts, and Friant Division contracts,  
12 as compared to the water supply that would be provided in the  
13 absence of action under this Act.

14 (2) EFFECT OF ACT.—Nothing in this Act modifies, amends, or  
15 affects any right or obligation of any party to a contract described in  
16 paragraph (1).

17 (b) Action on Determination.—If, after exploring all options, the  
18 Secretary makes a final determination that a proposed action under this  
19 Act cannot be carried out in accordance with subsection (a), the  
20 Secretary—

21 (1) shall document that determination in writing with regard to that  
22 action, including a statement of the facts relied on, and an  
23 explanation of the basis, for the decision; and

24 (2) is subject to applicable law, including the Endangered Species  
25 Act of 1973 (16 U.S.C. 1531 et seq.).

### 26 SEC. 404. ALLOCATIONS FOR 27 SACRAMENTO VALLEY WATER SERVICE 28 CONTRACTORS.

29 (a) Definitions.—In this section:

30 (1) EXISTING CENTRAL VALLEY PROJECT AGRICULTURAL WATER  
31 SERVICE CONTRACTOR WITHIN SACRAMENTO RIVER WATERSHED.—  
32 The term “existing Central Valley Project agricultural water service  
33 contractor within the Sacramento River Watershed” means any water  
34 service contractor within the Shasta, Trinity, or Sacramento River  
35 Division of the Central Valley Project that has in effect a water  
36 service contract on the date of enactment of this Act that provides  
37 water for irrigation.

38 (2) YEAR TERMS.—The terms “Above Normal”, “Below Normal”,  
39 “Dry”, and “Wet”, with respect to a year, have the meanings given



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1 those terms in the Sacramento Valley Water Year Type (40–30–30)  
2 Index.

3 (b) Allocations of Water.—

4 (1) ALLOCATIONS.—Subject to subsection (c), the Secretary of the  
5 Interior shall make every reasonable effort in the operation of the  
6 Central Valley Project to allocate water provided for irrigation  
7 purposes to each existing Central Valley Project agricultural water  
8 service contractor within the Sacramento River Watershed in  
9 accordance with the following:

10 (A) Not less than 100 percent of the contract quantity shall be  
11 allocated to the Central Valley Project agricultural water service  
12 contractor within the Sacramento River Watershed in a Wet  
13 year.

14 (B) Not less than 100 percent of the contract quantity shall be  
15 allocated to the Central Valley Project agricultural water service  
16 contractor within the Sacramento River Watershed in an Above  
17 Normal year.

18 (C) Not less than 100 percent of the contract quantity shall be  
19 allocated to the Central Valley Project agricultural water service  
20 contractor within the Sacramento River Watershed in a Below  
21 Normal year that is preceded by an Above Normal or Wet year.

22 (D) Not less than 50 percent of the contract quantity shall be  
23 allocated to the existing Central Valley Project agricultural  
24 water service contractor within the Sacramento River Watershed  
25 in a Dry year that is preceded by a Below Normal, Above  
26 Normal, or Wet year.

27 (E) Subject to paragraph (2), in any other year not identified  
28 in any of subparagraphs (A) through (D), the Secretary shall  
29 allocate not less than twice the allocation percentage to south-of-  
30 Delta Central Valley Project agricultural water service  
31 contractors, up to 100 percent.

32 (2) EFFECT OF SUBPARAGRAPH.—In the event of anomalous  
33 circumstances, nothing in paragraph (1)(E) precludes an allocation to  
34 an existing Central Valley Project agricultural water service  
35 contractor within the Sacramento River Watershed that is greater than  
36 twice the allocation percentage to a south-of-Delta Central Valley  
37 Project agricultural water service contractor.

38 (c) Protection of Environment, Municipal, and Industrial Supplies and  
39 Other Contractors.—

40 (1) ENVIRONMENT.—Nothing in subsection (b) shall adversely  
41 affect any protections for the environment, including—



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(A) the cold water pool behind Shasta Dam or any other Central Valley Project reservoir;

(B) the obligation of the Secretary of the Interior to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4722); or

(C) any obligation—

(i) of the Secretaries of the Interior and Commerce under the smelt biological opinion, the salmonid biological opinion, or any other applicable biological opinion; or

(ii) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706), or any other applicable law (including regulations).

(2) MUNICIPAL AND INDUSTRIAL SUPPLIES.—Nothing in subsection (b)—

(A) modifies any provision of a water service contract that addresses municipal or industrial water shortage policies of the Secretaries of the Interior and Commerce;

(B) affects or limits the authority of the Secretaries of the Interior and Commerce—

(i) to adopt or modify municipal and industrial water shortage policies; or

(ii) to implement a municipal or industrial water shortage policy;

(C) constrains, governs, or affects, directly or indirectly, the operations of the American River Division of the Central Valley Project or any deliveries from that Division or a unit or facility of that Division; or

(D) affects any allocation to a Central Valley Project municipal or industrial water service contractor by increasing or decreasing allocations to the contractor, as compared to the allocation the contractor would have received absent subsection (b).

(3) OTHER CONTRACTORS.—Nothing in subsection (b)—

(A) affects the priority of any individual or entity with a Sacramento River settlement contract over water service or repayment contractors;

(B) affects the obligation of the United States to make a substitute supply of water available to the San Joaquin River

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exchange contractors;

(C) affects the allocation of water to Friant Division contractors of the Central Valley Project;

(D) results in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division; or

(E) authorizes any actions inconsistent with State water rights law.

## TITLE V—MISCELLANEOUS PROVISIONS

### SEC. 501. AUTHORIZED SERVICE AREA.

(a) In General.—The service area of the Central Valley Project, as authorized by the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706), shall include the area within the boundaries of the Kettleman City Community Services District of California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District of California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—A Central Valley Project water delivery under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply to the State of California for a permit for a joint place of use for water deliveries under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), in accordance with State law.

(d) Additional Costs.—The applicable non-Federal entity shall pay the costs of any additional infrastructure, water treatment, or related costs are needed to carry out this section.

### SEC. 502. OVERSIGHT OVER AND PUBLIC INPUT INTO RESTORATION FUND

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### ACTIVITIES.

Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by striking subsection (f) and inserting the following:

“(f) Restoration Fund Financial Reports.—

“(1) TRANSPARENCY IN EXPENDITURES.—For the effective period of the California Emergency Drought Relief Act, the Secretary shall make available, on a publicly accessible Internet website, a report describing a detailed work plan for the expenditure of all amounts deposited in the Restoration Fund during the preceding fiscal year, including—

“(A) a description of all receipts to, and uses of, funds deposited in the Restoration Fund and the Restoration Account during the preceding fiscal year;

“(B) a projection of the expected receipts to the Restoration Fund and Restoration Account for the following fiscal year; and

“(C) an analysis of the effectiveness of each expenditure included in the report covering the preceding fiscal year.

“(2) PUBLIC PARTICIPATION FOR PLANNED EXPENDITURES.—

“(A) IN GENERAL.—For each fiscal year, the Secretary shall make available on a publicly accessible Internet website a proposed draft work plan for the following fiscal year regarding priorities and spending levels for projects and programs to be carried out under this title.

“(B) PUBLIC COMMENT.—The draft work plan under this paragraph shall be made available for public comment for a period not less than 30 days.”.

### SEC. 503. BASIN STUDIES.

(a) In General.—The Secretary of the Interior shall—

(1) expand opportunities and expedite completion of assessments under the Secure Water Act (section 9503(b) of Public Law 111–11 (42 U.S.C. 10363(b)), together with non-Federal partners, of individual sub-basins and watersheds within major Reclamation river basins; and

(2) ensure prompt decisionmaking regarding, and expedited implementation of, adaptation and mitigation strategies developed through the special study process.

(b) Contributed Funds.—The Secretary may accept and use contributions of funds from the non-Federal partners to carry out activities

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under the special studies consistent with the administration of basin studies program criteria.

### SEC. 504. TECHNICAL AND MODELING ASSISTANCE.

(a) In General.—The Secretaries of the Interior and Commerce may provide technical and modeling assistance on request to the State Water Resources Control Board during the drought emergency in effect on the date of enactment of this Act.

(b) Data Availability.—The Secretaries of the Interior and Commerce shall make publicly available on request any modeling and data provided under subsection (a).

### SEC. 505. REPORT ON RESULTS OF WATER USAGE.

The Secretary of the Interior, in consultation with the Secretary of Commerce and the Secretary of Natural Resources of the State of California, shall publish an annual report describing, with respect to the period covered by the report—

(1) instream flow releases from the Central Valley Project and State Water Project;

(2) the explicit purpose and authority of those releases; and

(3) all measured environmental benefits as a result of the releases.

### SEC. 506. ADDITIONAL STORAGE AT NEW MELONES.

(a) Coordination.—The Commissioner shall coordinate with local water and irrigation districts in the Stanislaus River Basin to identify the quantity of water storage made available by the draft plan of operations in New Melones Reservoir (referred to in this section as the “draft plan”) for—

(1) water conservation programs;

(2) conjunctive use projects;

(3) water transfers;

(4) rescheduled project water; and

(5) other projects to maximize water storage and ensure the beneficial use of the water resources in the Stanislaus River Basin.

(b) Requirement.—The programs and projects described in subsection (a) shall be implemented in accordance with applicable laws (including

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regulations).

(c) Source of Water.—The source of water for any storage program carried out under this section at New Melones Reservoir shall be made available under a valid water right, in accordance with—

(1) the water transfer guidelines of the State of California; and

(2) any other applicable State water law.

(d) Report.—Not later than 18 months after the date of identification of the quantity of storage made available under the draft plan that has been allocated under this section, the Commissioner shall submit to Congress a report describing the implementation of this section, including proposals received by the Commissioner from interested parties for purposes of this section.

### SEC. 507. CONTRACTING AUTHORITIES.

(a) Delta Research Station Leases.—Notwithstanding section 585 of title 40, United States Code, the Secretaries of the Interior and Commerce may enter directly into any lease of real property for the Delta Research Station.

(b) Collaborative Processes.—Notwithstanding the Federal Advisory Committee Act (5 U.S.C. App.) and applicable Federal acquisitions and contracting authorities, the Secretaries of the Interior and Commerce may use the collaborative processes under the Collaborative Science Adaptive Management Program to enter into contracts with specific individuals or organizations directly or in conjunction with appropriate State agencies.

### SEC. 508. SINGLE ANNUAL REPORT.

To the maximum extent practicable, the Secretary of the Interior shall combine into 1 report the annual reports required to be submitted under this Act to the Committees on Appropriations and Energy and Natural Resources of the Senate and the Committees on Appropriations and Natural Resources of the House of Representatives.

## TITLE VI—OFFSETS

### SEC. 601. DEAUTHORIZATION OF INACTIVE PROJECTS.

(a) Purposes; Definitions.—

(1) PURPOSES.—The purposes of this section are—

(A) to identify Bureau of Reclamation projects and programs that are no longer feasible due to—

(i) a lack of local support;

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1 (ii) a lack of available Federal or non-Federal resources;  
2 or

3 (iii) an authorized purpose that is no longer relevant or  
4 feasible;

5 (B) to establish an efficient and transparent process for  
6 deauthorizing Reclamation projects and programs that have  
7 failed to receive a minimum level of investment to ensure active  
8 projects can move forward while reducing the backlog of  
9 authorized projects;

10 (C) to create an expedited and definitive process to  
11 deauthorize Reclamation projects and programs;

12 (D) to allow the continued authorization of programs and  
13 projects that are feasible; and

14 (E) to establish a process for identifying authorized  
15 Reclamation projects and programs that are no longer—

16 (i) in the Federal interest; or

17 (ii) feasible.

18 (2) DEFINITIONS.—In this section:

19 (A) RECLAMATION PROJECT OR PROGRAM.—The term  
20 “Reclamation project or program” includes any project or  
21 program that is administered by the Bureau of Reclamation.

22 (B) SECRETARY.—The term “Secretary” means the Secretary  
23 of the Interior.

24 (b) Comprehensive Reports.—

25 (1) MINIMUM FUNDING LIST.—Not later than 180 days after the  
26 date of enactment of this Act, the Secretary shall submit to the  
27 Committee on Energy and Natural Resources of the Senate and the  
28 Committee on Natural Resources of the House of Representatives,  
29 and make available on a publicly accessible Internet website in a  
30 manner that is downloadable, searchable, and sortable, a list of—

31 (A) Reclamation programs authorized, and for which funding  
32 was obligated, during the current fiscal year or any of the  
33 preceding 5 fiscal years; and

34 (B)(i) Reclamation projects or separable elements of projects  
35 authorized for construction for which funding has been obligated  
36 during the current fiscal year or any of the 5 preceding fiscal  
37 years;

38 (ii) the amount of funding obligated for each such project or  
39 separable element per fiscal year;

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- 1 (iii) the current phase of each such project or separable  
2 element; and
- 3 (iv) the amount required to complete the current phase of each  
4 such project or separable element.
- 5 (2) BACKLOG REPORT.—Together with the report under paragraph  
6 (1), the Secretary shall submit to the Committee on Energy and  
7 Natural Resources of the Senate and the Committee on Natural  
8 Resources of the House of Representatives, and make available on a  
9 publicly accessible Internet website in a manner that is downloadable,  
10 searchable, and sortable, a list of—
- 11 (A) Reclamation programs that are authorized and for which  
12 funding was not obligated during the current fiscal year or any  
13 of the preceding 5 fiscal years; and
- 14 (B)(i) projects or separable elements that are authorized for  
15 construction but have not been completed;
- 16 (ii) the date of authorization of the project or separable  
17 element, including any subsequent modifications to the original  
18 authorization;
- 19 (iii) the original budget authority for the project or separable  
20 element;
- 21 (iv) a brief description of the project or separable element;
- 22 (v) the estimated date of completion of the project or  
23 separable element;
- 24 (vi) the estimated cost of completion of the project or  
25 separable element; and
- 26 (vii) any amounts appropriated for the project or separable  
27 element that remain unobligated.
- 28 (c) Interim Deauthorization List.—
- 29 (1) IN GENERAL.—The Secretary shall develop an interim  
30 deauthorization list that identifies each authorized Reclamation  
31 program or project, or separable element of a Reclamation program  
32 or project, for which Federal or non-Federal funds were not obligated  
33 for construction during—
- 34 (A) the applicable fiscal year; or
- 35 (B) any of the 5 preceding fiscal years.
- 36 (2) SPECIAL RULE FOR PROJECTS RECEIVING FUNDS FOR POST-  
37 AUTHORIZATION STUDY.—A Reclamation project or separable  
38 element of a Reclamation project may not be identified on the interim  
39 deauthorization list, or on the final deauthorization list under  
40 subsection (d), if the Reclamation project or separable element



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1 received funding for a post-authorization study during—

2 (A) the applicable fiscal year; or

3 (B) any of the 5 preceding fiscal years.

4 (3) PUBLIC COMMENT AND CONSULTATION.—

5 (A) IN GENERAL.—The Secretary shall solicit comments from  
6 the public and the Governors of each applicable State regarding  
7 the interim deauthorization list developed under paragraph (1).

8 (B) COMMENT PERIOD.—The public comment period under  
9 subparagraph (A) shall be 90 days.

10 (4) SUBMISSION TO CONGRESS; PUBLICATION.—Not later than 90  
11 days after the date of submission of the list required under subsection  
12 (b), the Secretary shall—

13 (A) submit the interim deauthorization list to the Committee  
14 on Energy and Natural Resources of the Senate and the  
15 Committee on Natural Resources of the House of  
16 Representatives; and

17 (B) publish the interim deauthorization list in the Federal  
18 Register.

19 (d) Final Deauthorization List.—

20 (1) IN GENERAL.—The Secretary shall develop a final  
21 deauthorization list of each Reclamation program or project, or  
22 separable element of a Reclamation program or project, described in  
23 subsection (c)(1) that is identified pursuant to this subsection.

24 (2) IDENTIFICATION OF PROJECTS.—

25 (A) SEQUENCING.—

26 (i) IN GENERAL.—The Secretary shall identify  
27 Reclamation projects and separable elements of  
28 Reclamation projects for inclusion on the final  
29 deauthorization list according to the order in which the  
30 Reclamation projects and separable elements were  
31 authorized, beginning with the earliest-authorized  
32 Reclamation projects and separable elements.

33 (ii) FACTORS FOR CONSIDERATION.—The Secretary may  
34 identify a Reclamation program, project, or separable  
35 element of a Reclamation program or project for exclusion  
36 from the final deauthorization list if the Secretary  
37 determines, on a case-by-case basis, that the Reclamation  
38 program, project, or separable element is critical for  
39 interests of the United States, based on the possible impact  
40 of the Reclamation program, project, or separable element



## DISCUSSION DRAFT

1 on—

2 (I) public health and safety;

3 (II) the national economy; or

4 (III) the environment.

5 (iii) CONSIDERATION OF PUBLIC COMMENTS.—In making  
6 a determination under clause (i) or (ii), the Secretary shall  
7 take into consideration any comments received under  
8 subsection (c)(3).

9 (B) APPENDIX.—The Secretary shall include as part of the  
10 final deauthorization list an appendix that—

11 (i) identifies each Reclamation program, project, and  
12 separable element of a Reclamation program or project on  
13 the interim deauthorization list developed under subsection  
14 (c) that is not included on the final deauthorization list; and

15 (ii) describes the reasons why the Reclamation program,  
16 project, or separable element is not included.

17 (3) SUBMISSION TO CONGRESS; PUBLICATION.—Not later than 120  
18 days after the date of expiration of the public comment period under  
19 subsection (c)(3), the Secretary shall—

20 (A) submit the final deauthorization list and the appendix  
21 under paragraph (2)(B) to the Committee on Energy and Natural  
22 Resources of the Senate and the Committee on Natural  
23 Resources of the House of Representatives; and

24 (B) publish the final deauthorization list and the appendix in  
25 the Federal Register.

26 (e) Deauthorization; Congressional Review.—

27 (1) IN GENERAL.—Subject to paragraph (2), effective beginning on  
28 the date that is 180 days after the date of submission of the final  
29 deauthorization list under subsection (d), a Reclamation program,  
30 project, or separable element of a Reclamation program or project  
31 included on the list is deauthorized, unless Congress passes a joint  
32 resolution disapproving the final deauthorization report before that  
33 date.

34 (2) NON-FEDERAL CONTRIBUTIONS.—A Reclamation program,  
35 project, or separable element included on the final deauthorization list  
36 under subsection (d) shall not be deauthorized under this subsection  
37 if, before the expiration of the 180-day period referred to in  
38 paragraph (1), the non-Federal interest of the Reclamation program,  
39 project, or separable element provides sufficient funds to complete  
40 the Reclamation program, project, or separable element.

## DISCUSSION DRAFT

(f) Treatment of Project Modifications.—For purposes of this section, if an authorized water resources development Reclamation program, project, or separable element of the program or project has been modified by an Act of Congress, the date of authorization of the Reclamation program, project, or separable element shall be deemed to be the date of the most recent modification.

(g) Exemption.—Any Reclamation project that would yield an average of more than 200,000 acre-feet of water per year shall be exempt from this subsection.

### SEC. 602. ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT.

(a) Short Title.—This section may be cited as the “Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act”.

(b) Definitions.—In this section:

(1) ACCOUNT.—The term “Account” means the Reclamation Surface Water Storage Account established under subsection (f)(1).

(2) CONSTRUCTION.—

(A) IN GENERAL.—The term “construction” means the designing, materials engineering and testing, surveying, and building of surface water storage.

(B) INCLUSIONS.—The term “construction” includes—

(i) any addition to existing surface water storage; and

(ii) construction of a new surface water storage facility.

(C) EXCLUSIONS.—The term “construction” excludes any Federal statutory or regulatory obligation relating to any permit, review, approval, or other similar requirement.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) SURFACE WATER STORAGE.—The term “surface water storage” means storage at—

(A) any federally owned facility under the jurisdiction of the Bureau of Reclamation; or

(B) any non-Federal facility used for the surface storage and supply of water resources.

(5) TREASURY RATE.—The term “Treasury rate” means the 20-year constant maturity treasury rate published by the United States Treasury, as in existence on the effective date of the applicable

## DISCUSSION DRAFT

1 contract.

2 (6) WATER USERS ASSOCIATION.—

3 (A) IN GENERAL.—The term “water users association” means  
4 an entity organized and recognized under State law that is  
5 eligible to enter into contracts with the Commissioner—

6 (i) to receive contract water for delivery to users of the  
7 water; and

8 (ii) to pay any applicable charges.

9 (B) INCLUSIONS.—The term “water users association”  
10 includes—

11 (i) an association;

12 (ii) a conservatory district;

13 (iii) an irrigation district;

14 (iv) a municipality; and

15 (v) a water project contract unit.

16 (c) Conversion and Prepayment of Contracts.—

17 (1) CONVERSION.—

18 (A) IN GENERAL.—On receipt of a request from a water users  
19 association, the Secretary shall convert any water service  
20 contract in effect on the date of enactment of this Act between  
21 the United States and the water users association to allow for  
22 prepayment of the repayment contract in accordance with this  
23 paragraph under mutually agreeable terms and conditions.

24 (B) MANNER.—The manner of conversion under this  
25 paragraph shall be as follows:

26 (i) Water service contracts entered under section 9(c)(2)  
27 of the Act of August 4, 1939 (53 Stat. 1194, chapter 418),  
28 to be converted under this section shall be converted to a  
29 contract under section 9(c)(1) of that Act (53 Stat. 1194,  
30 chapter 418).

31 (ii) Water service contracts entered into under section  
32 9(e) of the Act of August 4, 1939 (53 Stat. 1196, chapter  
33 418), to be converted under this section shall be converted  
34 to repayment contracts under section 9(d) of that Act (53  
35 Stat. 1195, chapter 418).

36 (2) PREPAYMENT.—

37 (A) SECTION 9(C)(1).—Except for a repayment contract under  
38 which the applicable water users association has previously

## DISCUSSION DRAFT

1 negotiated for prepayment, each repayment contract under  
2 section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1194,  
3 chapter 418) (including any contract converted pursuant to  
4 paragraph (1)(B)(i)), in effect on the date of enactment of this  
5 Act shall, at the request of the water users association—

6 (i) provide for the repayment in lump sum of the  
7 remaining construction costs identified in an applicable  
8 water project-specific municipal or industrial rate  
9 repayment schedule (as adjusted to reflect payment not  
10 reflected in the schedule) and properly assignable for  
11 ultimate return by the water users association, subject to the  
12 condition that an estimate of the remaining construction  
13 costs, as adjusted, shall be provided by the Secretary to the  
14 water users association by not later than 90 days after the  
15 date of receipt of the request of the water users association;

16 (ii) require that any construction costs or other  
17 capitalized costs that were incurred after the effective date  
18 of the contract, were not reflected in the rate schedule  
19 referred to in clause (i), or were not properly assignable to  
20 the water users association, and were incurred as a result of  
21 a collective annual allocation of capital costs to the water  
22 users association electing contract conversion under this  
23 subsection, shall be repaid—

24 (I) for costs equal to less than \$5,000,000, by not  
25 later than the date that is 5 years after the date of  
26 notification of the allocation; or

27 (II) for costs equal to \$5,000,000 or more, in  
28 accordance with applicable reclamation laws; and

29 (iii) continue in effect for the period during which the  
30 water users association pays applicable charges in  
31 accordance with section 9(c)(1) of the Act of August 4,  
32 1939 (53 Stat. 1194, chapter 418), and other applicable law.

33 (B) SECTION 9(D).—Except for a repayment contract under  
34 which the applicable water users association has previously  
35 negotiated for prepayment, each repayment contract under  
36 section 9(d) of the Act of August 4, 1939 (53 Stat. 1195, chapter  
37 418) (including any contract converted pursuant to paragraph  
38 (1)(B)(ii)), in effect on the date of enactment of this Act shall, at  
39 the request of the water users association—

40 (i) provide for repayment of the remaining construction  
41 costs identified in an applicable water project-specific  
42 irrigation rate repayment schedule (as adjusted to reflect  
43 payment not reflected in the schedule) and properly

## DISCUSSION DRAFT

assignable for ultimate return by the water users association in lump sum, by accelerated prepayment, or if made in approximately equal installments, by not later than 3 years after the effective date of the repayment contract, subject to the conditions that—

(I) the amount shall be discounted by  $\frac{1}{2}$  the Treasury rate; and

(II) the estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the water users association by not later than 90 days after the date of receipt of the request of the water users association;

(ii) require that any construction costs or other capitalized costs that were incurred after the effective date of the contract, were not reflected in the rate schedule referred to in clause (i), or were not properly assignable to the water users association, and were incurred as a result of a collective annual allocation of capital costs to the water users association electing contract conversion under this subsection, shall be repaid—

(I) for costs equal to less than \$5,000,000, by not later than the date that is 5 years after the date of notification of the allocation; or

(II) for costs equal to \$5,000,000 or more, in accordance with applicable reclamation laws;

(iii) provide that power revenues will not be available to aid in repayment of construction costs allocated to irrigation under the contract; and

(iv) continue in effect for the period during which the water users association pays applicable charges in accordance with section 9(d) of the Act of August 4, 1939 (53 Stat. 1195, chapter 418), and other applicable law.

(3) TREATMENT.—A contract entered into pursuant to this subsection—

(A) shall not be adjusted on the basis of the type of prepayment financing used by the applicable water users association;

(B) shall conform to any other applicable agreement, such as a settlement agreement or a new constructed appurtenant facility agreement; and

(C) shall not modify any other—

## DISCUSSION DRAFT

- 1 (i) water service, repayment, exchange, or transfer  
2 contractual right between the water users association, and  
3 the Bureau of Reclamation; or
- 4 (ii) right, obligation, or relationship of the water users  
5 association and an applicable landowner in accordance with  
6 State law.
- 7 (d) Accounting.—
- 8 (1) ADJUSTMENT.—The amounts paid pursuant to subsection (c)  
9 shall be subject to adjustment following a final cost allocation by the  
10 Secretary.
- 11 (2) DEFICIENCIES.—
- 12 (A) IN GENERAL.—If the final cost allocation under paragraph  
13 (1) indicates that the costs properly assignable to a water users  
14 association are greater than the costs paid by the water users  
15 association, the water users association shall be obligated to pay  
16 to the Secretary the remaining allocated costs under an  
17 additional repayment contract under subparagraph (B).
- 18 (B) ADDITIONAL REPAYMENT CONTRACTS.—An additional  
19 repayment contract required by subparagraph (A) shall—
- 20 (i) have a term of—
- 21 (I) not less than 1 year; and
- 22 (II) not more than 10 years; and
- 23 (ii) include such mutually agreeable provisions regarding  
24 the rate of repayment of the deficient amount as may be  
25 developed by the parties.
- 26 (3) OVERPAYMENTS.—If the final cost allocation under paragraph  
27 (1) indicates that the costs properly assignable to a water users  
28 association are less than the costs paid by the water users association,  
29 the Secretary shall credit the amount of the overpayment as an offset  
30 against any outstanding or future obligation of the water users  
31 association.
- 32 (e) Applicability of Certain Provisions.—
- 33 (1) EFFECT OF EXISTING LAW.—On compliance by a water users  
34 association with, and discharge of the obligation of repayment of the  
35 construction costs pursuant to, a contract entered into under to  
36 subsection (c)(2)(B), subsections (a) and (b) of section 213 of the  
37 Reclamation Reform Act of 1982 (43 U.S.C. 390mm) shall apply to  
38 any affected land.
- 39 (2) EFFECT OF OTHER OBLIGATIONS.—The obligation of a water  
40 users association to repay any construction costs or other capitalized

## DISCUSSION DRAFT

cost described in subparagraph (A)(ii) or (B)(ii) of subsection (c)(2), or subsection (d), shall not, on repayment, affect—

(A) the status of the water users association as having repaid all of the construction costs assignable to the water users association; or

(B) the applicability of subsection (a) or (b) of section 213 of the Reclamation Reform Act of 1982 (43 U.S.C. 390mm).

(f) Surface Water Storage Enhancement Program.—

(1) ESTABLISHMENT OF ACCOUNT.—The Secretary shall establish an account, to be known as the “Reclamation Surface Storage Account”, consisting of such amounts as are deposited in the Account under paragraph (2), to fund the construction of surface water storage.

(2) DEPOSITS.—Not later than 3 years after the date of enactment of this Act, an amount equal to 50 percent of receipts generated from the prepayment of contracts under this section in excess of amounts necessary to cover the amount of receipts forgone from scheduled payments under applicable law in effect on that date of enactment during the 10-year period beginning on that date of enactment shall be deposited in the Account.

(3) USE.—

(A) COOPERATIVE AGREEMENTS.—The Secretary may—

(i) enter into cooperative agreements with water users associations for the construction of surface water storage; and

(ii) use amounts in the Account to fund construction under such a cooperative agreement.

(B) TREATMENT.—A surface water storage project that is otherwise not federally authorized shall not be considered to be a Federal facility as a result of the allocation of any amount from the Account for any portion of the project.

(4) REPAYMENT.—Any amount from the Account used for surface water storage construction shall be fully reimbursed to the Account in accordance with applicable requirements under the reclamation laws, except that all funds reimbursed shall be deposited in the Account.

(5) AVAILABILITY OF AMOUNTS.—The amounts deposited in the Account under this subsection shall—

(A) be made available for the storage projects identified in section 402, subject to appropriation; and

(B) be in addition to amounts appropriated for those purposes



## DISCUSSION DRAFT

1 under any other provision of law.

2 (6) PURPOSES OF SURFACE WATER STORAGE.—The construction of  
3 surface water storage under this section shall be made available for  
4 the federally owned and State-led storage projects pursued under this  
5 Act, provided that funds are limited to the Federal cost-share (up to  
6 25 percent for State-led projects and up to 50 percent for federally  
7 owned projects).

8 (g) Effect of Section.—Nothing in this section—

9 (1) alters the repayment obligation of any water service or  
10 repayment contractor receiving water from a water project, or shifts  
11 any costs that would otherwise have been properly assignable to a  
12 water users association described in subsection (c) or another  
13 contractor, absent this section, including operation and maintenance  
14 costs, construction costs, or other capitalized costs incurred after the  
15 date of enactment of this Act; or

16 (2) alters any specific requirement for the disposition of amounts  
17 received as repayments by the Secretary under the reclamation laws.

## 18 TITLE VII—DURATION AND EFFECT ON 19 EXISTING OBLIGATIONS

### 20 SEC. 701. SAVINGS CLAUSE.

21 (a) In General.—This Act shall not be interpreted or implemented in a  
22 manner that—

23 (1) preempts or modifies any obligation of the United States to act  
24 in conformance with applicable State law;

25 (2) affects or modifies any obligation under the Central Valley  
26 Project Improvement Act (Public Law 102–575; 106 Stat. 4706),  
27 except for the procedural provisions relating to public input and  
28 savings provisions for the Stanislaus River predator management  
29 program expressly established by sections 203 and 502; or

30 (3) overrides, modifies, or amends the applicability of the  
31 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq) or the  
32 application of the smelt and salmonid biological opinions to the  
33 operation of the Central Valley Project or the State Water Project.

34 (b) Sense of Congress.—It is the sense of Congress that there is no  
35 conflict between this Act and the salmonid biological opinion, the smelt  
36 biological opinion, the Endangered Species Act of 1973 (16 U.S.C. 1531  
37 et seq.), and the Central Valley Project and State Water Project Drought  
38 Contingency Plan of 2015.

39



## DISCUSSION DRAFT

### 1 SEC. 702. TERMINATION.

2 All of title III (relating to California emergency drought relief and  
3 operational flexibility), except for subsections (a) through (d) of section  
4 301, and title IV (relating to water rights) shall expire on the date that is  
5 the later of—

6 (1) the date on which the Governor of the State of California  
7 declares an end to the State drought emergency; or

8 (2) two years after the date of enactment of this Act.  
9



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***California Long-Term Provisions for Water Supply  
and Short-Term Provisions for Emergency  
Drought Relief Act***

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**Eight Water Supply Benefits from Short-Term  
Operations**

**1) Agencies must explain reductions in pumping below -5000 cfs, the high end of the Delta Smelt biological opinion:**

- Like past drafts, agencies decide how much to pump under the smelt biological opinion. (*Section 301(e) on pages 60-62*)
- **If they pump below -5000 cfs, agencies must explain why this was necessary** to avoid “additional adverse effects on the listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion, using the best scientific and commercial data available”. (*Section 301(e)(4)(B)(ii) on page 61 lines 39 to page 62 line 12*)
- **This required explanation uses the same language as prior drafts.**

**2) Maximize water supply consistent with environmental laws:**

- During the drought, the agencies must maximize water supplies for the Central Valley Project and the State Water Project, consistent with applicable laws and regulations. (*Section 302(a)(1) on page 63, lines 18-28*)
- This requirement works together with the requirement that agencies must explain adverse effects that require a reduction in water supplies.

**3) The Discussion Draft allows for increased pumping during winter storms.**

- **Goal is to capture peak flows from El Niño winter storms.**

- **Agencies must evaluate increased pumping above -5000 cfs in the Old and Middle Rivers during those storms.** (*Section 303, pages 68-70, and in particular section 303(c) on page 69, lines 12-20*).

**4) The Discussion Draft eliminates automatic “payback” of water supply gains:**

- By eliminating this “payback” requirement, the agencies can keep the water they pump during winter storms.
- **Here is how “payback” works:**
  - **Over a 14 day period, agencies can’t average pumping at more than -5000 cfs** in Old and Middle Rivers.
  - In past years, this meant that if agencies pumped over -5000 cfs for a few days, they had to reduce pumping below -5000 cfs to meet the average.
  - As a result, **agencies had to lower pumping below -5000 cfs even if there was no environmental reason** to do so.
- **The Discussion Draft eliminates mandatory “payback”:**
  - Agencies can decide to pump at levels above -5000 cfs.
  - Agencies don’t have to reduce pumping later just to meet a 14-day average.
  - Thus there is no automatic payback requirement.
  - Pumping only needs to be reduced if environmental factors (like the presence of fish and salinity, among others) requires it.
- We worked closely with NOAA Fisheries on this language to ensure compliance with the ESA. (*Section 303(e), p. 70, lines 29-38*)

**5) The Discussion Draft emphasizes real-time monitoring.**

- **The Senate Bill requires agencies to operate the water system more precisely by doing the following:**
  - Operating pumps at higher levels when no fish are present and reducing pumping levels when fish are nearby. (*Section 301(b) to (d), pages 59-60*)
  - Requiring **daily boat monitoring to survey for smelt near the pumps** when turbidity levels are high, so that pumping reductions are made based on the facts. (*Section 301(b)(3), page 59, lines 22-35*)
  - Authorizing studies to **identify smelts' location in the Delta on a real-time basis**. (*Section 301(b)(1)-(2), page 59, lines 4-21*)
  - Authorizing a Delta Smelt Distribution Study to **identify how many smelt are in different parts of the Delta** in drier and wetter years. (*Section 301(d), page 60, lines 3-32*)

**The Discussion Draft facilitates water transfers in two ways:**

**6) Incentivizes increased water transfers through the use of a 1:1 transfer ratio.**

- Given this year's El Niño storms, this provision could provide some relief. Under a "1:1 ratio," if the river flows at 1,000 cubic feet per second, then water can be transferred at the same rate.
- Maintaining a 1:1 ratio for transfers through the spring and early summer will ensure that 100% of the water identified for a transfer goes to the communities that need it most. (*Section 302(b)(6) on page 64, line 40 to page 65, line 24*)

**7) Extends the time period for transfers by five months.**

- This extension will give willing sellers and willing buyers more time to move water, stretching supplies during the critical growing season.
- **How this provision works:** Transfers can now occur between April 1 and November 30 (currently July 1 to September 30), to the extent

consistent with the adaptive management part of the biological opinions.  
(*Section 302(b)(8) on page 65, line 41 to page 66, line 7*)

**8) The Discussion Draft directs the agencies to keep the Delta Cross Channel Gates open for as long as possible:**

- The bill requires the Secretary of the Interior and the Secretary of Commerce to take actions to ensure the Delta Cross Channel Gates remain open to the greatest extent possible, consistent with state and federal law. (*Section 302(b)(1) on page 64, lines 1 to 18*)
- When the gates are closed, water no longer flows directly from the Sacramento into the interior Delta.
- The gate's closures means that the agencies must either reduce pumping or used stored water to "flush" salty water back out through the Delta.
- **Keeping the gates open for longer** therefore helps control salinity in the Interior Delta and avoid releases of CVP and SWP water supplies. This helps both Delta farmers and communities and South of Delta communities.



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# *California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act*

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## **Bill Summary**

### **Overview**

The bill includes **long-term** and **short-term** provisions to help cope with the historic drought in the West.

#### **Long-term:**

With local sponsors as lead, and the federal and state governments providing financial support, the 132 projects identified by **this bill could produce upwards of 1.1 million acre feet in “new” water**, whether through recycling or desalination. The bill does this by:

- Re-authorizing the Desalination Act and providing \$100 million for research, design, and construction of desalination projects (*Sec. 121, pages 21-29*).
- The bill increases funding for WaterSMART from \$350 million to \$500 million and authorizes another \$200 million for recycling through Title XVI (*Sec. 101, pages 9-11*).
- The bill funds RIFIA—a new Reclamation loan and loan guarantee program—at the full \$200 million (*Sec. 131-141, pages 31-44*).
- The bill establishes a new program under Reclamation for providing assistance to communities that have run out of water (*Sec. 101, pages 10-11*).
- **The bill also authorizes \$600 million for storage projects** for storing water from the wet years for use during the dry ones. (*Sec. 112, pages 13-15*).

#### **Short-term:**

The bill provides **maximum assurances** that the bill does not violate any **environmental law**, like the Endangered Species Act or the biological opinions. Here's how:



- **Information from real-time monitoring determines pumping rates**, not specific congressional mandates or targets.
- **Real-time monitoring will produce the information necessary to operate the system more precisely.** (*Section 301, pages 50-54*)
  - The bill authorizes **daily boat monitoring to survey for smelt near the pumps** when turbidity levels are high and the smelt are often attracted to the pumps. (*Sec. 301, page 51*)
  - This bill also authorizes studies to **identify smelts' location in the Delta on a real-time basis**, so pumping can be increased when the fish are not near the pumps and reduced when fish are present. (*Sec. 301, page 51*)
  - The bill commissions a Delta Smelt Distribution Study to **identify how many smelt are in different parts of the Delta** in drier and wetter years, information that is key to running pumps in a manner that isn't harmful to fish.
- **The bill includes a savings clause** that makes clear the drought bill is consistent with all environmental laws, including the Endangered Species Act and biological opinions. (*Section 701, page 76*)

**Four key goals guide this legislation:**

- **Help communities** most at risk of running out of clean water.
- Provide \$1.3 billion in funding and support for **long-term solutions including water storage, desalination and recycling.**
- **Protect and attempt to restore threatened and endangered species.**
- Modify how the Central Valley Project and State Water Project are operated to **maximize efficiency during the governor's drought emergency declaration** in a manner that adheres to all environmental laws.

## LONG-TERM INVESTMENTS

*(Title I)*

- *This bill authorizes \$1.3 billion in federal support for State and local efforts to increase their drought resiliency.*
- *Here's the ways in which the bill increases investments in California's drought resiliency:*

### **Assistance for drought-stricken communities**

- **Allows rural and disadvantaged communities with fewer than 60,000 residents to apply for grants through a new Reclamation program to help stabilize their water supplies.** Funds can be used for both short-term solutions such as emergency bottled water supplies as well as long-term solutions such as water treatment facilities, wells and connecting homes to centralized water distribution systems. *(Section 101, pages 8-11)*
- Prioritizes State Revolving Funds for communities most at risk of running out of water. Last year, California received more than \$180 million in these funds. **By directing some of these funds to at-risk communities,** the bill provides California with the tools necessary to provide water for public health and safety and to increase drought resiliency. *(Section 102, page 12)*

### **Storage projects**

*(\$600 million through 2025)*

**Storing water during wet years for use in dry years is vital,** given the consensus that droughts will grow more severe.

- Authorizes \$600 million for water storage projects in California and other Western states. These may include both federal projects (Shasta) and non-federal projects (Sites, Temperance Flat, Los Vaqueros). *(Sections 111 and 112, pages 12-15)*
- Establishes **deadlines** for the Bureau of Reclamation **to complete feasibility studies** to allow Calfed storage projects to compete for Proposition 1 bond funds. California's Proposition 1—approved by two-thirds of voters in 2014—**provides \$2.7 billion in storage funding.** This means California projects are expected to compete strongly for the matching federal funds made available by this bill. *(Section 115, page 19)*

- **Updates Army Corps dam operations** to increase water supply while reducing flood risk. (*Section 113, pages 15-18*)

### **Desalination**

*(\$100 million through 2020)*

- Identifies **27 desalination projects throughout California** capable of producing more than 330,000 acre-feet of water per year. The Secretary of the Interior would be required to consider these projects for funding. (*Section 121*)
- Reauthorizes the *Desalination Act* and authorizes the following funds (*Section 122 pages 27-29*):
  - This section also authorizes \$50 million over five years for desalination research projects, such as **improving existing reverse osmosis and membrane technology**, reducing the environmental effects of seawater desalination and developing next-generation technologies to reduce the cost of desalination.
  - \$50 million over five years for feasibility and design for both sea and brackish water desalination projects. Senator Boxer also introduced legislation that would reauthorize the *Desalination Act*, but at lower funding levels.

### **Water recycling**

*(\$350 million through 2020)*

- The bill identifies **105 water recycling and reuse projects** with the potential to provide more than 853,756 acre-feet per year of “new” water. (*Section 121, pages 21-27*)
- Increases the authorization for the Bureau of Reclamation’s **WaterSMART program from \$350 million to \$500 million**. These grants are for long-term water conservation, reclamation and recycling projects, including small-scale storage and reclamation projects. (*Section 101, page 10*)
- Authorizes **\$200 million for water-recycling projects** through Title XVI that reclaim and reuse wastewaters and naturally impaired ground and surface water. (*Section 123, pages 29-31*).

**RIFIA and WaterSense**  
*(\$210 million through 2020)*

By providing funds for the most cost-effective federal programs, Washington can help state and local agencies leverage existing dollars into larger projects.

- **Reclamation Infrastructure Finance and Innovation Act (RIFIA):** Authorizes **\$200 million RIFIA**. This loan-guarantee and low-cost loan program will allow water districts and municipalities to leverage loans and loan guarantees for water projects, reducing repayment loan costs by as much as 25 percent. This is modeled after TIFIA, a successful loan-guarantee program for transportation projects. *(Subtitle IV.E; Sections 131 through 141, pages 31-44)*
- **WaterSense:** Authorizes **\$10 million for EPA’s WaterSense program**, which provides information on which household products are water-efficient. The program is modelled after the successful Energy Star program for energy efficient household appliances. *(Section 124, page 31)*

**ACTIONS TO BENEFIT FISH AND WILDLIFE**  
*(Title II)*

**Protecting fish populations**  
*(\$45 million through 2020)*

- The bill includes **\$45 million to assist in the protection and recovery of fish populations**. *(Section 201, pages 44-46)*
- Directs federal agencies to develop and implement a pilot program—funded by local water districts—to **protect threatened and endangered salmon and steelhead by removing non-native predator fish** from the Stanislaus River, such as striped bass, smallmouth bass, largemouth bass and black bass. *(Section 203, pages 47-50)*
- Directs federal agencies to develop and implement pilot projects to **reduce invasive aquatic vegetation to improve survival and recovery of endangered fish**. Invasive species—such as water hyacinth—have played major roles in the decline of listed fish in the Bay-Delta, including the Delta Smelt. *(Section 204, pages 50)*

**Assisting refuges for migratory birds**  
*(additional \$2 million annually through 2020)*

- Authorizes an additional \$2 million dollars per year to **improve water conveyance infrastructure**, which will help deliver water to wildlife refuges. *(Section 202, pages 46-47)*

**SHORT-TERM, TEMPORARY OPERATIONS**  
*(Title III)*

- *Includes six provisions to move water during the drought in California all while operating within environmental laws and regulations.*
- *Also includes language that makes clear all actions must be taken consistent with law and that none of the provisions violate the Endangered Species Act, the Clean Water Act, the biological opinions, or state law*
- *Since the recycling, desalination, and storage projects this bill identifies will take years, and in some cases decades to construct, we cannot overlook the importance of short-term relief.*

**Environmental protections**

- The legislation includes a “savings clause” making clear that **nothing in the bill overrides or modifies the *Endangered Species Act* or any other environmental law.** *(Section 701, page 76)*
- **The federal agencies with expertise in the *Endangered Species Act*** (the National Marine Fisheries Service and U.S. Fish and Wildlife Service) **helped write the operations provisions to ensure pumping is in compliance with environmental laws and biological opinions.**

**Real-time monitoring to protect fish species**

- **Equips the agencies with the tools necessary to operate the system more precisely**, by pumping when the fish are close to the pumps and ratcheting down pumping when the fish are close. *(Section 301, pages 50-54)*
  - Authorizes **daily boat monitoring to survey for smelt near the pumps** when turbidity levels are high and the smelt are often attracted to the pumps.

- Authorizes studies to **identify smelts' location in the Delta on a real-time basis**, so pumping can be increased when the fish are not near the pumps and reduced when fish are present.
- Authorizes a Delta Smelt Distribution Study to **identify how many smelt are in different parts of the Delta** in drier and wetter years, information that is key to running pumps in a manner that isn't harmful to fish.

### Temporary Operational Provisions

#### 1) **Pumping at the high end of the Delta Smelt provision** (*Section 301(e), pages 52-53*):

- **How the provision works:** The revised bill gives the agencies the discretion to choose at what level to pump, based on real-time monitoring, updated studies, and the most up-to-date science.
- The revised text simply requires the agencies to explain why pumping at the high end of the smelt biological opinion would cause adverse effects to fish, if they decide to pump at a lower levels. This is a straightforward request: That the agencies exercise their discretion to pump as environmental conditions dictate but provide explanations for the decisions they make

#### 2) **Winter Storms and “payback”** (*Section 303, pages 58-60*):

- **How the provision works:** The revised bill authorizes the agencies to increase pumping during winter storms, and allows the agencies to use their best judgment to determine what level of outflows is the appropriate trigger for increased pumping.
- Given that the agencies have discretion when to increase pumping, litigation risk is greatly reduced.
- **Payback:** Once those storms are over, the agencies would no longer be required to “pay back” the water that was already pumped, unless there was an environmental reason. (*Section 303*)

#### 3) **1:1 transfer ratio:** Provides incentives for increased water transfers. Water transfers sent into the Delta in April and May can only be withdrawn at a 1:1 ratio if the transfers adhere to environmental law and biological opinions. (*Section 302(b)(6), pages 55-56*)

- Given this year's El Niño storms, this provision could provide some relief. Contractors can currently transfer 100% of transfer water because San Joaquin Valley is “critically dry,” and the biological opinion allows a “1:1 ratio” – if the river flows at 1,000 cubic feet per second, then water can be transferred at the same rate.

- Maintaining a 1:1 ratio for transfers through the spring and early summer will ensure that 100% of the water identified for a transfer goes to the communities that need it most, unless there is a sound environmental reason to allow some of that water to be lost through the Delta.
- 4) **Extended window for water transfers :** The Draft Bill extends the window for transfers from April 1 to November 30 (currently July 1 to September 30), if the extended transfers can be done consistent with the biological opinions. (*Section 302(b)(6), pages 55-56*)
- 5) **Reviewing transfers and barriers:** Environmental reviews of water transfers and the installation and removal of temporary barriers must be completed within 60 days, unless an environmental impact statement is required. (*Sec. 302(b)(7)-(9), pages 56-57*)
- 6) **Delta Cross-Channel Gates:** The bill requires the Secretary of the Interior and the Secretary of Commerce to take steps to ensure the Gates remain open to the greatest extent possible. (*Section 302(b)(7), page 56*)
- When the gates are closed, CVP and SWP water stored in Shasta, Oroville and Folsom must be released to reduce salinity in the Interior Delta, resulting in the loss of water that would otherwise be delivered to contractors.
  - This requirement will help control salinity in the Interior Delta and avoid mandatory releases of CVP and SWP water supplies.

## **ADDITIONAL PROVISIONS**

*(Titles IV and V)*

- Protect and preserve water rights and ensure that some State Water Project and Central Valley Project water contractors do not benefit from the legislation at the expense of others. (*Sections 401 to 404, pages 60-64*)
- Authorizes the Bureau of Reclamation to expand its service area to include Kettleman City and directs the Bureau of Reclamation to enter into a long-term contract with the Kettleman City Community Services District to **provide them up to 900 acre feet of water**. Kettleman City residents have struggled with contaminated groundwater for years, and this provision would help ensure Kettleman City's 1,500 residents secure access to clean water supplies. (*Section 501, pages 64-65*)
- This section requires the Secretary of the Interior to **publish expenditures and an evaluation of those expenditures for the Restoration Fund** (in 2014,

revenues were approximately \$53 million), publicize a draft work plan for the upcoming year and solicit public comment. (*Section 502, page 65*)

- Directs the Department of the Interior to **complete its assessment of the risks to water resources** in specific watersheds posed by climate change. (*Section 503, pages 65-66*)
- *If requested*, the Departments of Interior and Commerce are required to provide technical and modeling assistance to the State Water Resources Control Board in protecting water quality during the drought. (*Section 504, page 66*)
- Directs the Bureau of Reclamation to **publish an annual report on water releases for benefit of fish** and evaluate their environmental benefits. (*Section 505, page 66*)
- Requires the Bureau of Reclamation to **identify potential additional storage capacity in New Melones Reservoir** that may be made available to local water and irrigation districts in the Stanislaus River Basin. (*Section 506, page 66-67*)
- Facilitates efforts by the California Department of Water Resources and U.S. Fish and Wildlife Service to **construct a unified federal/state Delta Research Station at the old Rio Vista Army Base**. (*Section 507, page 67*)
- Allows Departments of Interior and Commerce to **provide a single annual report** under the reporting requirements of the Act to reduce the burden on the agencies. (*Section 508, page 67*)

## **PAYING FOR THE BILL**

*(Title VI)*

- Based on recently enacted legislation to **deauthorize inactive Army Corps of Engineers projects**, this section requires the Secretary of the Interior to identify projects and program that have not received funding in the past five years. After providing an opportunity for public comment and congressional disapproval, the Interior Secretary may formally deauthorize those projects or programs. (*Section 601, pages 67-71*)

Estimated by the Bureau of Reclamation to provide between \$700 million and \$1.3 billion.



- Directs the Department of the Interior to **convert certain existing water service contracts** between the United States and water users' associations to repayment contracts **to allow for prepayment** of such contracts, upon the request of the contractor. Requires a specified percentage of certain receipts generated from prepayment of contracts under this title to fund the construction of CALFED surface water storage. Estimated by the Bureau of Reclamation to provide \$630 million. (Sec.602, pages 71-76)

## **DURATION**

*(Title VII)*

- **The temporary provisions will sunset two years after the date of enactment or when the governor's drought declaration ends, whichever is later.** (Sec. 702, page 91)



**From:** Tom Birmingham  
**Sent:** Thursday, January 21, 2016 1:42 PM  
**To:** 'Rojewski, Cole'; 'David L. Bernhardt'; 'Johnny Amaral'  
**CC:** 'Dunklin, Kristina'  
**Subject:** RE: Sen. Feinstein's drought bill discussion draft

Cole,

I have looked very quickly at the emergency operations provisions, and they are very close to what was in the language being negotiated at the end of the last session. Substantively, the language gets us to the same spot. I have not had a chance to review the bill in its entirety.

Please let me know if you would like to have a call to discuss the draft.

Tom

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]  
**Sent:** Thursday, January 21, 2016 12:33 PM  
**To:** Tom Birmingham <tbirmingham@westlandswater.org>; David L. Bernhardt <DBernhardt@BHFS.com>; Johnny Amaral <jamaral@westlandswater.org>  
**Cc:** Dunklin, Kristina <Kristina.Dunklin@mail.house.gov>  
**Subject:** Fwd: Sen. Feinstein's drought bill discussion draft

Please find it attached. Let me know your thoughts.

Begin forwarded message:

**From:** Rojewski, Cole  
**Sent:** Thursday, January 21, 2016 3:32 PM  
**To:** Tom Birmingham; 'David L. Bernhardt'; 'Johnny Amaral'  
**CC:** Dunklin, Kristina  
**Subject:** RE: Sen. Feinstein's drought bill discussion draft

Thanks Tom. I think a call would be good on Monday once we all have time to digest. I don't see how it gets us to the same spot. I've renamed this bill to the "Recycle & DeSal Bill".

Regardless the House bill stands ready for conference. Looking forward to the Senior Senator passing this in the Senate.

---

**From:** Tom Birmingham [mailto:[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)]  
**Sent:** Thursday, January 21, 2016 12:42 PM  
**To:** Rojewski, Cole; 'David L. Bernhardt'; 'Johnny Amaral'  
**Cc:** Dunklin, Kristina  
**Subject:** RE: Sen. Feinstein's drought bill discussion draft

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---

**From:** Rojewski, Cole [mailto:[Cole.Rojewski@mail.house.gov](mailto:Cole.Rojewski@mail.house.gov)]  
**Sent:** Thursday, January 21, 2016 12:33 PM  
**To:** Tom Birmingham <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>; David L. Bernhardt <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>; Johnny Amaral <[amaral@westlandswater.org](mailto:amaral@westlandswater.org)>  
**Cc:** Dunklin, Kristina <[Kristina.Dunklin@mail.house.gov](mailto:Kristina.Dunklin@mail.house.gov)>  
**Subject:** Fwd: Sen. Feinstein's drought bill discussion draft

Please find it attached. Let me know your thoughts.

Begin forwarded message:

**From:** Rooney, Kenneth (Feinstein)

**Sent:** Thursday, January 21, 2016 4:50 PM

**To:** Tom Birmingham; Thad Bettner; Steve Chedester (stevechedester@sjrecwa.net); Dan Vink (dvink@svwater.org); jphillips@friantwater.org; David Orth; jsutton@tccanal.com; TNassif@WGA.com; pwenger@CFBF.com; DBernhardt@BHFS.com; 'bwalthall@kcwa.com'

**CC:** Duck, Jennifer (Feinstein); Watts, John (Feinstein); Segal, Alexis (Feinstein); Peterson, James (Feinstein)

**Subject:** Drought bill discussion draft

**Attachments:** Drought Bill Discussion Draft, 1.21.16.pdf; Drought bill discussion draft, summary (1.21.16).pdf

As you all may have seen, Sen. Feinstein released the discussion the draft of the drought bill this afternoon. Although you'll have hard copies waiting for you at tomorrow's meeting (in addition to supplemental materials), I wanted to send along the bill text and summary.

Please let me or John know if you have any questions.

Thanks,

Ken

## DISCUSSION DRAFT

Title: To provide short-term water supplies to drought-stricken California and provide for long-term investments in drought resiliency throughout the Western United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec.1.Short title; table of contents.

Sec.2.Purposes.

Sec.3.Findings.

Sec.4.Definitions.

### TITLE I—LONG-TERM IMPROVEMENTS FOR WESTERN STATES SUBJECT TO DROUGHT

#### Subtitle A—Assistance for Drought-stricken Communities

Sec.101. WaterSMART reauthorization and assistance for drought-stricken communities and.

Sec.102.Utilizing State revolving funds for areas with inadequate water supplies.

#### Subtitle B—Storage Provisions

Sec.111.Definitions.

Sec.112.Water storage project construction.

Sec.113.Reservoir operation improvement.

Sec.114.Findings.

Sec.115.Studies.

Sec.116.Losses caused by construction and operation of water storage projects.

## **DISCUSSION DRAFT**

### **Subtitle C—Desalination, Water Reuse and Recycling, and Conservation**

Sec.121.Water recycling and desalination projects.

Sec.122.Reauthorization of Water Desalination Act.

Sec.123.New water recycling and reuse projects.

Sec.124.Promoting water efficiency with WaterSense.

### **Subtitle D—Reclamation Infrastructure Finance and Innovation**

Sec.131.Purposes.

Sec.132.Definitions.

Sec.133.Authority to provide assistance.

Sec.134.Applications.

Sec.135.Eligibility for assistance.

Sec.136.Determination of eligibility and project selection.

Sec.137.Secured loans.

Sec.138.Program administration.

Sec.139.State and local permits.

Sec.140.Regulations.

Sec.141.Funding.

## **TITLE II—LISTED SPECIES AND WILDLIFE**

Sec.201.Actions to benefit endangered fish populations.

Sec.202.Actions to benefit refuges.

Sec.203.Non-Federal program to protect native anadromous fish in Stanislaus River.

Sec.204.Pilot projects to implement Calfed invasive species program.

## **TITLE III—CALIFORNIA EMERGENCY DROUGHT RELIEF AND OPERATIONAL FLEXIBILITY**

Sec.301.Taking into account increased real-time monitoring and updated science.

Sec.302.Emergency operations.

## DISCUSSION DRAFT

1 Sec.303.Temporary operational flexibility to capture peak flows from  
2 winter storms.

3 Sec.304.Emergency environmental reviews.

4 Sec.305.Level of detail required for analysis.

### 5 TITLE IV—WATER RIGHTS

6 Sec.401.Offset for State Water Project.

7 Sec.402.Area of origin and water rights protections.

8 Sec.403.No redirected adverse impacts.

9 Sec.404.Allocations for Sacramento Valley water service contractors.

### 10 TITLE V—MISCELLANEOUS PROVISIONS

11 Sec.501.Authorized service area.

12 Sec.502.Oversight over and public input into Restoration Fund activities.

13 Sec.503.Basin studies.

14 Sec.504.Technical and modeling assistance.

15 Sec.505.Report on results of water usage.

16 Sec.506.Additional storage at New Melones.

17 Sec.507.Contracting authorities.

18 Sec.508.Single annual report.

### 19 TITLE VI—OFFSETS

20 Sec.601.Deauthorization of inactive projects.

21 Sec.602.Accelerated revenue, repayment, and surface water storage  
22 enhancement.

### 23 TITLE VII—DURATION AND EFFECT ON 24 EXISTING OBLIGATIONS

25 Sec.701.Savings clause.

26 Sec.702.Termination.

## 27 SEC. 2. PURPOSES.

28 The purposes of this Act are—

29 (1) to help communities most at risk of running out of clean water;

30 (2) to provide funding and support for long-term solutions  
31 including water storage, desalination and recycling;



## DISCUSSION DRAFT

- 1 (3) to protect threatened and endangered species; and  
2 (4) to facilitate the movement of water to communities most in  
3 need while adhering to all environmental laws.

### 4 SEC. 3. FINDINGS.

5 Congress finds that—

- 6 (1) California is experiencing one of the most severe droughts on  
7 record, with the snowpack at the lowest levels in 500 years;
- 8 (2) Governor Jerry Brown declared a drought state of emergency  
9 on January 17, 2014, and subsequently imposed strict water  
10 reductions on communities throughout the State;
- 11 (3) the drought constitutes a serious emergency that poses  
12 immediate and severe risks to—
- 13 (A) human health and safety;
- 14 (B) economic security; and
- 15 (C) the environment;
- 16 (4) wells that provide households with clean water are drying up as  
17 the State entered its fourth consecutive summer of drought, with  
18 approximately 2,591 wells statewide identified as critical or dry,  
19 affecting an estimated 12,955 residents, many in the Central Valley;
- 20 (5) rural and disadvantaged communities have been hardest hit,  
21 placing great strain on drinking water supplies in the Southern San  
22 Joaquin Valley—
- 23 (A) 69 communities in Southern San Joaquin Valley have  
24 reported significant water supply and quality issues; and
- 25 (B) East Porterville is particularly hard hit, with 40 percent, or  
26 3,000, of its residents, without running water;
- 27 (6) the drought has resulted in many lost jobs including more than  
28 21,000 seasonal and part-time agricultural jobs—resulting in a 10.9  
29 percent unemployment rate in the Central Valley, double the  
30 statewide unemployment rate of 5.7 percent, as of December 15,  
31 2015;
- 32 (7) thousands of families have been affected, placing ever greater  
33 demands on food banks and other relief organizations, and as of  
34 December 21, 2015—
- 35 (A) the California Department of Social Services Drought  
36 Food Assistance Program has provided more than 1,000,000  
37 boxes to food banks in affected communities with high levels of  
38 unemployment; and

## DISCUSSION DRAFT

(B) nearly 72 percent of the food distributions have occurred in the Tulare Basin counties of Fresno, Kern, Kings, and Tulare;

(8) 2015 statewide economic costs are estimated at \$2,700,000, including but not limited to—

(A) the loss of \$900,000,000 in crop revenue;

(B) the loss of \$350,000,000 in dairy and other livestock value; and

(C) an increase of \$590,000,000 in groundwater pumping costs;

(9) 1,032,508 acres in California's Central Valley were fallowed in 2015, a 626,512 acre increase from 2011;

(10) the drought is imperiling California's forests, which provide important ecological, economic, and cultural benefits to the State, and among the effects of the drought—

(A) loss of 50,000,000 large trees due to stress from lack of water;

(B) 88,000,000 trees, covering 26,000,000 acres of California forestland, experienced losses of canopy cover since 2011, threatening ecosystem destruction and loss of animal habitat; and

(C) 6,337 fires covering 307,598 acres occurred in 2015;

(11) fish continue to be threatened by the extended drought, compounding effects on two endangered species, further reducing river flows and increasing water temperatures—

(A) Delta smelt abundance is at a historic low, as evidenced by long-term monitoring surveys;

(B) the abundance of the last remaining population of wild Sacramento River winter run Chinook salmon continue to decline, with mortality rates between 95 percent and 97 percent over the past 2 years;

(C) wildlife has also been affected, with water deliveries to wildlife refuges under the Central Valley Project Improvement Act reduced by 25 percent in the north-of-Delta region and 35 percent in the south-of-Delta region; and

(D) these reduced water supplies have contributed to a decline of the Pacific Flyway, a migratory route for waterfowl that spans from Alaska to South America—

(i) a reduction in water supplies has led to a significant decline in flooded rice fields, a vital habitat for migratory birds. Only one-third of the usual acres of rice fields were

## DISCUSSION DRAFT

1 flooded in 2015; and

2 (ii) the reduction of available habitat for migratory  
3 waterfowl contributed to an increased risk of disease in the  
4 remaining wetlands due to overcrowding of birds;

5 (12) subsidence in California is occurring at more than 12 inches  
6 per year, caused in part by an increase in groundwater pumping of  
7 more than 6,000,000 acre feet. Some areas in the Central Valley have  
8 sunk as much as 2 inches per month, and the damage from  
9 subsidence is wide-ranging—

10 (A) roads, bridges, building foundations, pipelines, and other  
11 infrastructure have been damaged;

12 (B) vital aquifers have been depleted;

13 (C) vital levees have sustained cracks and ruptures; and

14 (D) shallow aquifers have become vulnerable to  
15 contamination as surface water infiltrates through fissures in the  
16 soil;

17 (13) California homes, cities, wildlife, businesses and farming  
18 need more water than is available today, particularly in the San  
19 Joaquin Valley;

20 (14) Congress recognizes that providing more water to those who  
21 need it most will require science-based management of water  
22 supplies and fish and wildlife resources, including—

23 (A) alternative management strategies, such as removing  
24 nonnative species, enhancing habitat, monitoring fish movement  
25 and location in real-time, and improving water quality in the  
26 Delta, which could contribute significantly to protecting and  
27 recovering those endangered fish species, and at potentially  
28 lower costs to water supplies than solely focusing on restrictions  
29 on water exports; and

30 (B) updated science and improved monitoring tools that  
31 provide Federal and State agencies with better information about  
32 conditions and operations that may or may not lead to high  
33 salvage events that jeopardize fish populations; and

34 (15) given the dire effects outlined above and the potential for  
35 continued harm, this emergency requires—

36 (A) immediate and credible action that takes into account the  
37 complexity and importance of the water system to the State; and

38 (B) policies that do not position stakeholders against one  
39 another, which in the past has led to costly litigation that  
40 benefits no one and prevents any real solutions.

## DISCUSSION DRAFT

### SEC. 4. DEFINITIONS.

In this Act:

(1) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

(2) CENTRAL VALLEY PROJECT.—The term “Central Valley Project” has the meaning given the term in section 3403 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4707).

(3) COMMISSIONER.—The term “Commissioner” means the Commissioner of Reclamation.

(4) DELTA.—The term “Delta” means the Sacramento-San Joaquin Delta and the Suisun Marsh (as defined in section 12220 of the California Water Code and section 29101 of the California Public Resources Code (as in effect on the date of enactment of this Act)).

(5) DELTA SMELT.—The term “Delta smelt” means the fish species with the scientific name *Hypomesus transpacificus*.

(6) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(7) LISTED FISH SPECIES.—The term “listed fish species” means—

(A) any natural origin steelhead, natural origin genetic spring run Chinook, or genetic winter run Chinook salmon (including any hatchery steelhead or salmon population within the evolutionary significant unit or a distinct population segment); and

(B) Delta smelt.

(8) MAXIMIZE.—The term “maximize”, with respect to fish and water supply benefits, means to use improved real-time information to achieve the dual goals of maximizing water exports to Central Valley Project and State Water Project contractors while increasing fish protections when needed, in accordance with—

(A) the salmonid biological opinion;

(B) the smelt biological opinion; and

(C) applicable law.

(9) OMR.—The term “OMR” means the Old and Middle River in the Delta.

(10) OMR FLOW.—The term “OMR flow” means Old and Middle River flow of any given measurement, expressed in cubic feet per second, as described in—

## DISCUSSION DRAFT

1 (A) the smelt biological opinion; and

2 (B) the salmonid biological opinion.

3 (11) RECLAMATION STATE.—The term “Reclamation State” means  
4 any of the States of—

5 (A) Arizona;

6 (B) California;

7 (C) Colorado;

8 (D) Idaho;

9 (E) Kansas;

10 (F) Montana;

11 (G) Nebraska;

12 (H) Nevada;

13 (I) New Mexico;

14 (J) North Dakota;

15 (K) Oklahoma;

16 (L) Oregon;

17 (M) South Dakota;

18 (N) Texas;

19 (O) Utah;

20 (P) Washington; and

21 (Q) Wyoming.

22 (12) SALMONID BIOLOGICAL OPINION.—

23 (A) IN GENERAL.—The term “salmonid biological opinion”  
24 means the biological and conference opinion of the National  
25 Marine Fisheries Service dated June 4, 2009, regarding the long-  
26 term operation of the Central Valley Project and the State Water  
27 Project, and successor biological opinions.

28 (B) INCLUSIONS.—The term “salmonid biological opinion”  
29 includes the operative incidental take statement of the opinion  
30 described in subparagraph (A).

31 (13) SMELT BIOLOGICAL OPINION.—

32 (A) IN GENERAL.—The term “smelt biological opinion” means  
33 the biological opinion dated December 15, 2008, regarding the  
34 coordinated operation of the Central Valley Project and the State  
35 Water Project, and successor biological opinions.

## DISCUSSION DRAFT

(B) INCLUSIONS.—The term “smelt biological opinion” includes the operative incidental take statement of the opinion described in subparagraph (A).

(14) STATE WATER PROJECT.—The term “State Water Project” means the water project described in chapter 5 of part 3 of division 6 of the California Water Code (sections 11550 et seq.) (as in effect on the date of enactment of this Act) and operated by the California Department of Water Resources.

### TITLE I—LONG-TERM IMPROVEMENTS FOR WESTERN STATES SUBJECT TO DROUGHT

#### Subtitle A—Assistance for Drought-stricken Communities

#### SEC. 101. WATERSMART REAUTHORIZATION AND ASSISTANCE FOR DROUGHT-STRICKEN COMMUNITIES

.

(a) Findings.—Congress finds that—

(1) across the United States, more than 90 percent of the community water systems serve populations of less than 10,000 individuals;

(2) the number of dry wells continues to increase as the State of California enters the fourth consecutive summer of drought, with approximately 2,591 wells statewide identified as critical or dry, which affects an estimated 12,955 residents, with 2,444 of the dry wells concentrated in the inland regions within the Central Valley;

(3) many areas of the State of California are disproportionately impacted by drought because the areas are heavily dependent or completely reliant on groundwater from basins that are in overdraft and in which the water table declines year after year or from basins that are contaminated; and

(4) those communities throughout the State of California have been impacted by the presence of naturally occurring arsenic in the groundwater among other contaminants, as a result of higher concentration of contaminants in the water.

(b) Amendment.—Section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) is amended—

## DISCUSSION DRAFT

1 (1) by redesignating subsections (b) through (e) as subsections (d)  
2 through (f), respectively;

3 (2) by inserting after subsection (b) the following:

4 “(c) Water Storage, Integrated Regional Water Management,  
5 Reclamation, and Recycling Projects.—

6 “(1) IN GENERAL.—The Secretary of the Interior is authorized to  
7 enter into cost shared financial assistance and other long-term  
8 agreements with non-Federal participants to advance the planning,  
9 design, and construction of non-Federal permanent water storage and  
10 conveyance facilities, projects for the reclamation and reuse of  
11 municipal, industrial, domestic and agricultural wastewater, and  
12 naturally impaired ground and surface waters, groundwater recharge,  
13 and other water management improvement projects for which the  
14 Secretary of the Interior is authorized under this subtitle to assist an  
15 applicant in the planning, design, and construction.

16 “(2) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of the  
17 Interior may provide financial assistance under this subtitle to carry  
18 out projects within—

19 “(A) any Reclamation State, including—

20 “(i) Arizona;

21 “(ii) California;

22 “(iii) Colorado;

23 “(iv) Idaho;

24 “(v) Kansas;

25 “(vi) Montana;

26 “(vii) Nebraska;

27 “(viii) Nevada;

28 “(ix) New Mexico;

29 “(x) North Dakota;

30 “(xi) Oklahoma;

31 “(xii) Oregon;

32 “(xiii) South Dakota;

33 “(xiv) Texas;

34 “(xv) Utah;

35 “(xvi) Washington;

36 “(xvii) Wyoming; and

## DISCUSSION DRAFT

1 “(B) the States of Alaska and Hawaii.

2 “(3) PRIORITY.—In providing financial assistance under this  
3 section, the Secretary of the Interior shall give priority to storage,  
4 conveyance, and water management improvement projects that—

5 “(A) ensure the efficient and beneficial use of water or reuse  
6 of recycled water;

7 “(B) use integrated and coordinated water management on a  
8 watershed or regional scale;

9 “(C) increase the availability of usable water supplies in a  
10 watershed or region to benefit individuals, the economy, and the  
11 environment and include adaptive measures needed to address  
12 climate change and future demands;

13 “(D) where practicable, provide flood control or recreation  
14 benefits and include the development of incremental  
15 hydroelectric power generation; and

16 “(E) generate environmental benefits, such as benefits to  
17 fisheries, wildlife and habitat, water quality, water-dependent  
18 ecological systems, and water supply benefits to agricultural and  
19 urban water users.

20 “(4) FEDERAL COST SHARE.—The Federal share of the cost of a  
21 project under this subsection shall be—

22 “(A) an amount equal to the lesser of—

23 “(i) 25 percent of total costs; and

24 “(ii) \$20,000,000 (adjusted for inflation); and

25 “(B) nonreimbursable.

26 “(5) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost  
27 of a project under this subsection may include in-kind contributions  
28 to the planning, design, and construction of the project.

29 “(6) TITLE; OPERATION AND MAINTENANCE COSTS.—The non-  
30 Federal entity entering into a financial assistance agreement under  
31 this subsection shall—

32 “(A) hold title in and to all facilities constructed under this  
33 subsection, and

34 “(B) be solely responsible for the costs of operating and  
35 maintaining those facilities.”; and

36 (3) in subsection (f) (as redesignated by paragraph (1)), by striking  
37 “\$350,000,000” and inserting “\$500,000,000”.

38 (c) Amendment.—Section 9508 of the Omnibus Public Land  
39 Management Act of 2009 (42 U.S.C. 10368) is amended—



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1 (1) by redesignating subsections (b) through (e) as subsections (c)  
2 through (f), respectively; and

3 (2) by inserting after subsection (a) the following:

4 “(b) Additional Assistance for Communities Without Access to  
5 Adequate Water.—

6 “(1) IN GENERAL.—To assist disadvantaged communities that have  
7 experienced a significant decline in quantity or quality of drinking  
8 water, and to obtain or maintain adequate quantities of water that  
9 meet the standards set by the Federal Water Pollution Control Act (33  
10 U.S.C. 1251 et seq.), the Secretary of the Interior is authorized to  
11 provide grants for communities—

12 “(A) that are unable to meet the primary water quality  
13 standards under that Act; or

14 “(B) the local private or public water supply of which has  
15 been lost or severely diminished due to drought conditions.

16 “(2) ELIGIBLE COMMUNITIES.—To be eligible to receive a grant  
17 under this subsection, a community shall carry out a project described  
18 in paragraph (3), the service area of which—

19 “(A) shall not be located in any city or town with a population  
20 of more than 60,000 residents; and

21 “(B) has a median household income of less than 100 percent  
22 of the nonmetropolitan median household income of the State.

23 “(3) ELIGIBLE PROJECTS.—Projects eligible for this program may  
24 be used for—

25 “(A) emergency water supplies;

26 “(B) point of use treatment and point of entry systems;

27 “(C) distributed treatment facilities;

28 “(D) construction of new water source facilities including  
29 wells and connections to existing systems;

30 “(E) water distribution facilities;

31 “(F) connection fees to existing systems;

32 “(G) assistance to households to connect to water facilities;  
33 and

34 “(H) any combination of activities described in subparagraphs  
35 (A) through (G).

36 “(4) PRIORITIZATION.—In determining priorities for funding  
37 projects, the Secretary of the Interior shall take into consideration—

38 “(A) where water outages—

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- 1 “(i) are most serious; and  
2 “(ii) pose the greatest threat to public health and safety;  
3 and  
4 “(B) whether the applicant has the ability to qualify for  
5 alternative funding sources.  
6 “(5) MAXIMUM AMOUNT.—The amount of a grant provided under  
7 this section may be made up to 100 percent of costs, including—  
8 “(A) initial operation costs incurred for start-up and testing of  
9 project facilities;  
10 “(B) components to ensure such facilities and components are  
11 properly operational; and  
12 “(C) costs of operation or maintenance incurred subsequent to  
13 placing the facilities or components into service.”.

### 14 SEC. 102. UTILIZING STATE REVOLVING 15 FUNDS FOR AREAS WITH INADEQUATE 16 WATER SUPPLIES.

- 17 (a) In General.—For the 5-year period beginning on the date of  
18 enactment of this Act, in allocating amounts to California from the Clean  
19 Water State Revolving Fund established under title VI of the Federal  
20 Water Pollution Control Act (33 U.S.C. 1381 et seq.) and the Drinking  
21 Water State Revolving Fund established under section 1452 of the Safe  
22 Drinking Water Act (42 U.S.C. 300j–12) for any project eligible to receive  
23 assistance under section 603 of the Federal Water Pollution Control Act  
24 (33 U.S.C. 1383) or section 1452(a)(2) of the Safe Drinking Water Act (42  
25 U.S.C. 300j–12(a)(2)), respectively, that the State of California determines  
26 will provide additional water supplies most expeditiously to areas that are  
27 at risk of having an inadequate supply of water for public health and safety  
28 purposes or to improve resiliency to drought, the Administrator of the  
29 Environmental Protection Agency shall—  
30 (1) require the State of California to review and prioritize funding;  
31 (2) make a finding on any request for a waiver received from the  
32 State of California by not later than 30 days after the date of  
33 conclusion of the informal public comment period pursuant to section  
34 436(c) of division G of Public Law 113–76 (128 Stat. 347); and  
35 (3) authorize, at the request of the State of California, 40-year  
36 financing for assistance under section 603(d)(2) of the Federal Water  
37 Pollution Control Act (33 U.S.C. 1383(d)(2)) or section 1452(f)(2) of  
38 the Safe Drinking Water Act (42 U.S.C. 300j–12(f)(2)), as applicable.  
39 (b) Effect of Section.—Nothing in this section authorizes the

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Administrator of the Environmental Protection Agency to modify any funding allocation, funding criteria, or other requirement relating to State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or the State drinking water treatment revolving loan funds established under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) for any State other than California.

### Subtitle B—Storage Provisions

#### SEC. 111. DEFINITIONS.

In this subtitle:

(1) **FEDERALLY OWNED STORAGE PROJECT.**—The term “federally owned storage project” means any project involving a surface water storage facility in a Reclamation State—

(A) to which the United States holds title; and

(B) that was authorized to be constructed, operated, and maintained pursuant to the reclamation laws.

(2) **STATE-LED STORAGE PROJECT.**—The term “State-led storage project” means any project in a Reclamation State that—

(A) involves a groundwater or surface water storage facility constructed, operated, and maintained by any State, department of a State, subdivision of a State, or public agency organized pursuant to State law; and

(B) provides a benefit in meeting any obligation under Federal law (including regulations).

#### SEC. 112. WATER STORAGE PROJECT CONSTRUCTION.

(a) **Federally Owned Storage Projects.**—

(1) **AGREEMENTS.**—On the request of any State, any department, agency, or subdivision of a State, or any public agency organized pursuant to State law, the Secretary of the Interior may negotiate and enter into an agreement on behalf of the United States for the design, study, and construction or expansion of any federally owned storage project in accordance with this section.

(2) **FEDERAL COST SHARE.**—Subject to the requirements of this subsection, the Secretary of the Interior may participate in a federally owned storage project in an amount equal to not more than 50 percent of the total cost of the federally owned storage project.

(3) **COMMENCEMENT.**—The construction of a federally owned

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storage project that is the subject of an agreement under this subsection shall not commence until the Secretary of the Interior—

(A) determines that the proposed federally owned storage project is feasible in accordance with the reclamation laws;

(B) secures an agreement providing upfront funding as is necessary to pay the non-Federal share of the capital costs; and

(C) determines that, in return for the Federal cost-share investment in the federally owned storage project, at least a proportionate share of the project benefits are Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges.

(4) ENVIRONMENTAL LAWS.—In participating in a federally owned storage project under this subsection, the Secretary of the Interior shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) State-led Storage Projects.—

(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Interior may participate in a State-led storage project in an amount equal to not more than 25 percent of the total cost of the State-led storage project.

(2) REQUEST BY GOVERNOR.—Participation by the Secretary of the Interior in a State-led storage project under this subsection shall not occur unless—

(A) the participation has been requested by the Governor of the State in which the State-led storage project is located;

(B) the State or local sponsor determines, and the Secretary of the Interior concurs, that—

(i) the State-led storage project is technically and financially feasible;

(ii) sufficient non-Federal funding is available to complete the State-led storage project; and

(iii) the State-led storage project sponsors are financially solvent;

(C) the Secretary of the Interior determines that, in return for the Federal cost-share investment in the State-led storage project, at least a proportional share of the project benefits are the Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges; and

(D) the Secretary of the Interior submits to Congress a written

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1 notification of these determinations.

2 (3) ENVIRONMENTAL LAWS.—When participating in a State-led  
3 storage project under this subsection, the Secretary shall comply with  
4 all applicable environmental laws, including the National  
5 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

6 (4) INFORMATION.—When participating in a State-led storage  
7 project under this subsection, the Secretary of the Interior—

8 (A) may rely on reports prepared by the sponsor of the State-  
9 led storage project, including feasibility (or equivalent) studies,  
10 environmental analyses, and other pertinent reports and  
11 analyses; but

12 (B) shall retain responsibility for making the independent  
13 determinations described in paragraph (2).

14 (c) Authority to Provide Assistance.—The Secretary of the Interior may  
15 provide financial assistance under this subtitle to carry out projects within  
16 any Reclamation State, including—

17 (1) Arizona;

18 (2) California;

19 (3) Colorado;

20 (4) Idaho;

21 (5) Kansas;

22 (6) Montana;

23 (7) Nebraska;

24 (8) Nevada;

25 (9) New Mexico;

26 (10) North Dakota;

27 (11) Oklahoma;

28 (12) Oregon;

29 (13) South Dakota;

30 (14) Texas;

31 (15) Utah;

32 (16) Washington; and

33 (17) Wyoming.

34 (d) Rights to Use Capacity.—Subject to compliance with State water  
35 rights laws, the right to use the capacity of a federally owned storage  
36 project or State-led storage project for which the Secretary of the Interior

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has entered into an agreement under this subsection shall be allocated in such manner as may be mutually agreed to by the Secretary of the Interior and each other party to the agreement.

(e) Compliance With California Water Bond.—

(1) IN GENERAL.—The provision of Federal funding for construction of a State-led storage project in the State of California shall be subject to the condition that the California Water Commission shall determine that the State-led storage project is consistent with the California Water Quality, Supply, and Infrastructure Improvement Act, approved by California voters on November 4, 2014.

(2) APPLICABILITY.—This subsection expires on the date on which State bond funds available under the Act referred to in paragraph (1) are fully expended.

(f) Partnership and Agreements.—The Secretary of the Interior, acting through the Commissioner, may partner or enter into an agreement regarding the water storage projects identified in section 103(d)(1) of the Water Supply, Reliability, and Environmental Improvement Act (Public Law 108–361; 118 Stat. 1688) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance those projects.

(g) Authorization of Appropriations.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$600,000,000 to remain available until expended.

(2) ELIGIBILITY.—Only a federally owned storage project or State-led storage project that has been determined by the Secretary of the Interior to meet the eligibility criteria described in subsections (a) and (b) shall be eligible to receive funding under this section.

(h) Sunset.—This section shall apply only to federally owned storage projects and State-led storage projects that the Secretary of the Interior determines to be feasible before January 1, 2021.

## SEC. 113. RESERVOIR OPERATION IMPROVEMENT.

(a) Report.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the Committees on Appropriations and Environment and Public Works of the Senate and the Committees on Appropriations and Transportation and Infrastructure of the House of Representatives a report describing, with respect to any State under a gubernatorial drought declaration during water year 2015 or 2016, the following:

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1 (1) A list of Corps of Engineer projects and non-Federal projects  
2 operated for flood control in accordance with rules prescribed by the  
3 Secretary of the Army pursuant to section 7 of the Act of December  
4 22, 1944 (commonly known as the “Flood Control Act of 1944”) (58  
5 Stat. 890, chapter 665)).

6 (2) The year during which the original water control manual was  
7 approved.

8 (3) The year during which any subsequent revisions to the water  
9 control plan and manual of the project are proposed to occur.

10 (4) A list of projects for which operational deviations for drought  
11 contingency have been requested, and the status of the request.

12 (5) The means by which water conservation and water quality  
13 improvements were addressed.

14 (6) A list of projects for which permanent or seasonal changes to  
15 storage allocations have been requested, and the status of the request.

16 (b) Project Identification.—Not later than 60 days after the date of  
17 completion of the report under subsection (a), the Secretary of the Army  
18 shall identify any projects described in the report that meet the following  
19 criteria:

20 (1) The project is located in a State in which a drought emergency  
21 has been declared or was in effect during the 1-year period preceding  
22 the date of final review by the Secretary.

23 (2) The water control manual and hydrometeorological information  
24 establishing the flood control rule curves of the project are considered  
25 out of date as a result of not being updated for a period of 20 years.

26 (3) A non-Federal sponsor of a Corps of Engineers project, or  
27 owner of a non-Federal project, as applicable, has submitted to the  
28 Secretary a written request to revise water operations manuals,  
29 including flood control rule curves, based on the use of improved  
30 weather forecasting or run-off forecasting methods, new watershed  
31 data, changes to project operations, or structural improvements.

32 (c) Pilot Projects.—

33 (1) IN GENERAL.—Not later than 1 year after the date of  
34 identification of projects under subsection (b), if any, the Secretary of  
35 the Army shall carry out not more than 15 pilot projects, including  
36 not less than 6 non-Federal projects (within the meaning of  
37 subsection (a)(1)), if any are identified under subsection (b), to  
38 implement revisions of water operations manuals, including flood  
39 control rule curves, based on the best available science, which may  
40 include—

41 (A) forecast-informed operations;



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1 (B) new watershed data; and

2 (C) if applicable, in the case of non-Federal projects,  
3 structural improvements.

4 (2) CONSULTATION.—In implementing the pilot projects pursuant  
5 to this subsection, the Secretary of the Army shall consult with all  
6 affected interests, including—

7 (A) non-Federal entities responsible for operations and  
8 maintenance costs of a Corps of Engineers facility;

9 (B) affected water rights holders;

10 (C) individuals and entities with storage entitlements; and

11 (D) local agencies with flood control responsibilities  
12 downstream of a Corps of Engineers facility.

13 (d) Coordination With Non-federal Project Entities.—Before carrying  
14 out an activity under this section, if a project identified under subsection  
15 (b) is—

16 (1) a non-Federal project, the Secretary of the Army shall—

17 (A) consult with the non-Federal project owner; and

18 (B) enter into a cooperative agreement, memorandum of  
19 understanding, or other agreement with the non-Federal project  
20 owner describing the scope and goals of the activity and the  
21 coordination among the parties; or

22 (2) owned and operated by the Corps of Engineers, the Secretary of  
23 the Army shall—

24 (A) consult with each non-Federal entity (including a  
25 municipal water district, irrigation district, joint powers  
26 authority, or other local governmental entity) that currently—

27 (i) manages (in whole or in part) a Corps of Engineers  
28 dam or reservoir; or

29 (ii) is responsible for operations and maintenance costs;  
30 and

31 (B) enter into a cooperative agreement, memorandum of  
32 understanding, or other agreement with each the entity  
33 describing the scope and goals of the activity and the  
34 coordination among the parties.

35 (e) Consideration.—In designing and implementing a forecast-informed  
36 reservoir operations plan, the Secretary of the Army shall work closely  
37 with the National Oceanic and Atmospheric Administration and may  
38 consider—

39 (1) the relationship between ocean and atmospheric conditions,



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including the El Nino and La Nina cycles, and the potential for above-normal, normal, and below-normal rainfall for the coming water year, including consideration of atmospheric river forecasts;

(2) the precipitation and runoff index specific to the basin and watershed of the relevant dam or reservoir, including incorporating knowledge of hydrological and meteorological conditions that influence the timing and quantity of runoff;

(3) improved hydrologic forecasting for precipitation, snowpack, and soil moisture conditions;

(4) an adjustment of operational flood control rule curves to optimize water supply storage and reliability, hydropower production, environmental benefits for flows and temperature, and other authorized project benefits, without a reduction in flood safety; and

(5) proactive management in response to changes in forecasts.

(f) Funding.—

(1) DEFINITION OF OPERATIONAL DOCUMENT.—In this subsection, the term “operational document” means—

(A) a water control plan;

(B) a water control manual;

(C) a water control diagram;

(D) a release schedule;

(E) a rule curve;

(F) an operational agreement with a non-Federal entity; and

(G) any environmental documentation associated with a document described in any of subparagraphs (A) through (F).

(2) ACCEPTANCE AND USE.—The Secretary of the Army may accept and expend amounts from non-Federal entities to fund all or a portion of the cost of carrying out a review or revision of operational documents for any reservoir that is either operated or maintained by the Secretary, or for which the Secretary is authorized to prescribe regulations or otherwise advise or consult concerning the use of storage allocated for flood risk management or navigation.

(g) Effect of Manual Revisions and Other Provisions.—

(1) MANUAL REVISIONS.—In accordance with all applicable laws, a revision of a manual shall not interfere with—

(A) the authorized purposes of a Corps of Engineers project;

or

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(B) the existing purposes of a non-Federal project that is regulated for flood control by the Secretary of the Army.

(2) EFFECT.—

(A) ACT.—Nothing in this Act authorizes the Secretary of the Army to carry out, at a Corps of Engineers or non-Federal dam or reservoir, any project or activity for a purpose not otherwise authorized as of the date of enactment of this Act.

(B) SECTION.—Nothing in this section—

(i) affects or modifies any obligation of the Secretary of the Army under State law; or

(ii) authorizes the diversion or use of water in a manner that is inconsistent with State water rights law.

(3) BUREAU OF RECLAMATION PROJECTS EXCLUDED.—This section shall not apply to any dam or reservoir owned by the Bureau of Reclamation.

(h) Modifications to Manuals and Curves.—Not later than 180 days after the date of completion of a modification to an operations manual or flood control rule curve, the Secretary of the Army shall submit to Congress a report regarding the components of the forecast-based reservoir operations plan incorporated into the change.

## SEC. 114. FINDINGS.

Congress finds that—

(1) the record drought conditions being experienced in the State of California as of the date of enactment of this Act are—

(A) expected to recur in the future; and

(B) likely to do so with increasing frequency;

(2) water storage is an indispensable and integral part of any solution to address the long-term water challenges of the State of California;

(3) Congress has authorized relevant feasibility studies for 5 water storage projects in the State of California, including projects for—

(A) enlargement of Shasta Dam in Shasta County under section 2(a) of Public Law 96–375 (94 Stat. 1506), as reaffirmed under section 103(d)(1)(A)(i)(I) of Public Law 108–361 (118 Stat. 1684);

(B) enlargement of Los Vaqueros Reservoir in Contra Costa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(i)(II) of Public Law 108–361 (118 Stat. 1684);

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(C) construction of North-of-Delta Offstream Storage (Sites Reservoir) in Colusa County under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(I) of Public Law 108–361 (118 Stat. 1684);

(D) construction of the Upper San Joaquin River storage (Temperance Flat) in Fresno and Madera Counties under section 215 of Public Law 108–7 (117 Stat. 147), as reaffirmed under section 103(d)(1)(A)(ii)(II) of Public Law 108–361 (118 Stat. 1684); and

(E) expansion of San Luis Reservoir under section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694);

(4) as of the date of enactment of this Act, more than 10 years have elapsed since the authorization of the feasibility studies referred to in paragraph (3), but for a variety of reasons the slow pace of work on completion of the feasibility studies for those 5 water storage projects is unjustified and of deep concern; and

(5) there is significant public interest in, and urgency with respect to, completing all feasibility studies and environmental reviews for the water storage projects referred to in paragraph (3), given the critical need for that infrastructure to address current and future water challenges of the State of California.

## SEC. 115. STUDIES.

The Secretary of the Interior, through the Commissioner, shall—

(1) complete the Upper San Joaquin River (Temperance Flat) feasibility study described in clause (ii)(II) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than March 31, 2016;

(2) complete the Los Vaqueros Reservoir feasibility study described in clause (i)(II) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2016;

(3) complete a publicly available draft of the North-of-Delta Offstream Storage (Sites Reservoir) feasibility study described in clause (ii)(I) of section 103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2016;

(4) complete the North-of-Delta Offstream Storage (Sites Reservoir) feasibility study described in clause (ii)(I) of section

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103(d)(1)(A) of Public Law 108–361 (118 Stat. 1684) and submit the study to the appropriate committees of the House of Representatives and the Senate not later than November 30, 2017;

(5) complete the San Luis Reservoir feasibility study described in section 103(f)(1)(A) of Public Law 108–361 (118 Stat. 1694) and submit the study to the appropriate Committees of the House of Representatives and the Senate not later than December 31, 2017;

(6) provide a progress report on the status of the feasibility studies referred to in paragraphs (1) through (3) to the appropriate committees of the House of Representatives and the Senate not later than 90 days after the date of enactment of this Act and every 180 days thereafter until December 31, 2017, as applicable, which report shall include timelines for study completion, draft environmental impact statements, final environmental impact statements, and records of decision;

(7) document, delineate, and publish costs directly relating to the engineering and construction of a water storage project separately from the costs resulting from regulatory compliance or the construction of auxiliary facilities necessary to achieve regulatory compliance if the Secretary of the Interior determines in any feasibility study required under this subsection, reclamation laws, the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law, that the project is not feasible;

(8) include information required in paragraph (7) in the feasibility studies issued pursuant paragraphs (1) through (5), as applicable; and

(9) communicate, coordinate, and cooperate with public water agencies that—

(A) contract with the United States for Central Valley Project water; and

(B) are expected to participate in the cost pools that will be created for the projects proposed in the feasibility studies under this section.

## SEC. 116. LOSSES CAUSED BY CONSTRUCTION AND OPERATION OF WATER STORAGE PROJECTS.

The Secretary of the Interior, in consultation with other appropriate agencies, shall establish a process to address direct and substantial impacts caused by any storage projects identified under section 115.

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### Subtitle C—Desalination, Water Reuse and Recycling, and Conservation

#### SEC. 121. WATER RECYCLING AND DESALINATION PROJECTS.

(a) Findings.—Congress finds that—

(1) Federal funding to support water recycling and desalination projects in recent years has been insufficient to address water supply needs in many regions across the United States;

(2) climate variability and drought resiliency require additional water supply projects to cope with higher probabilities of longer, more intense droughts;

(3) the historic drought in the State of California highlights the necessity of long-term projects to address a changing climate;

(4) surveys conducted by the by the National Association of Clean Water Agencies, the Water Reuse Association, the Association of California Water Agencies, and the California Association of Sanitation Agencies have identified 131 water recycling projects in 14 States capable of producing 1,180,000 acre-feet of new municipal water supplies if sufficient funding or financing tools existed to facilitate development of the projects;

(5) there exists a Federal interest in the projects referred to in paragraph (4) to the extent that the projects can—

(A) diversify water supplies;

(B) reduce conflicts hindering existing Federal reclamation efforts on the Colorado River and around the Delta; and

(C) advance technologies which reduce the cost and improve the efficiency of water desalination projects; and

(6) this Act will enable Federal support for desalination projects, including the projects referred to in paragraph (4) and others by providing Federal cost-share grants, through the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298), the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.), and the WaterSMART program of the Department of the Interior, and by making low-cost loans or loan guarantees available under subtitle D.

(b) Water Recycling Projects.—On submission of a completed feasibility report in accordance with Bureau of Reclamation standards, the Secretary of the Interior shall review requests for water recycling project funding assistance and, subject to the availability of appropriations, award

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1 funding, on a competitive basis, for projects that meet the eligibility  
2 requirements of this title, subject to the condition that the Secretary shall  
3 include among the projects reviewed water recycling projects sponsored  
4 by any of the following:

- 5 (1) Bear Valley Community Services District.
- 6 (2) Beaumont Cherry Valley Water District.
- 7 (3) Burbank Water and Power.
- 8 (4) Cambria Community Services District.
- 9 (5) Central Contra Costa Sanitary District.
- 10 (6) City of American Canyon.
- 11 (7) City of Benicia.
- 12 (8) City of Brentwood.
- 13 (9) City of Camarillo.
- 14 (10) City of Carlsbad (Municipal Water District).
- 15 (11) City of Corona Department of Water and Power.
- 16 (12) City of Daly City.
- 17 (13) City of Del Mar.
- 18 (14) City of Escondido.
- 19 (15) City of Fresno.
- 20 (16) City of Hayward.
- 21 (17) City of Los Angeles (Bureau of Sanitation and Department of  
22 Water and Power).
- 23 (18) City of Modesto.
- 24 (19) City of Morro Bay.
- 25 (20) City of Mountain View.
- 26 (21) City of Oceanside.
- 27 (22) City of Palo Alto.
- 28 (23) City of Paso Robles.
- 29 (24) City of Pismo Beach.
- 30 (25) City of Pleasanton.
- 31 (26) City of Poway.
- 32 (27) City of Redwood City.
- 33 (28) City of Riverside.

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- 1 (29) City of Roseville.
- 2 (30) City of Sacramento.
- 3 (31) City of San Bernardino.
- 4 (32) City of San Diego.
- 5 (33) City of San Luis Obispo.
- 6 (34) City of Santa Barbara.
- 7 (35) City of Santa Rosa.
- 8 (36) City of Shasta Lake.
- 9 (37) City of Sunnyvale.
- 10 (38) City of Turlock.
- 11 (39) City of Vacaville.
- 12 (40) City of Visalia.
- 13 (41) Clear Creek Community Services District.
- 14 (42) Coachella Valley Water District.
- 15 (43) Cucamonga Valley Water District.
- 16 (44) Delta Diablo Sanitation District.
- 17 (45) Desert Water Agency.
- 18 (46) Dublin San Ramon Services District.
- 19 (47) East Bay Municipal Utility District.
- 20 (48) East Valley Water District.
- 21 (49) Eastern Municipal Water District.
- 22 (50) El Dorado Irrigation District.
- 23 (51) Fallbrook Public Utility District.
- 24 (52) Goleta Water District.
- 25 (53) Helendale Community Services District.
- 26 (54) Hi-Desert Water District.
- 27 (55) Idyllwild Water District.
- 28 (56) Inland Empire Utilities Agency.
- 29 (57) Ironhouse Sanitary District.
- 30 (58) Irvine Ranch Water District.
- 31 (59) Las Virgenes Municipal Water District.
- 32 (60) Leucadia Wastewater District.

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- 1 (61) Los Carneros Water District.
- 2 (62) Marin Municipal Water District.
- 3 (63) Monterey Regional Water Pollution Control Agency.
- 4 (64) Napa County Department of Public Works.
- 5 (65) North Bay Water Reuse Authority.
- 6 (66) North Marin Water District.
- 7 (67) Novato Sanitary District.
- 8 (68) Olivenhain Municipal Water District.
- 9 (69) Orange County Sanitation District.
- 10 (70) Orange County Water District.
- 11 (71) Otay Water District.
- 12 (72) Padre Dam Municipal Water District.
- 13 (73) Pajaro Valley Water Management Agency.
- 14 (74) Paradise Irrigation District.
- 15 (75) Pebble Beach Community Services District.
- 16 (76) Rainbow Municipal Water District.
- 17 (77) Ramona Municipal Water District.
- 18 (78) Rancho California Water District.
- 19 (79) Rincon Del Diablo Municipal Water District.
- 20 (80) Sacramento Regional County Sanitation District.
- 21 (81) San Bernardino County Special Districts.
- 22 (82) San Francisco Public Utilities Commission.
- 23 (83) San Jose Water Company.
- 24 (84) San Luis Obispo County.
- 25 (85) Santa Clara Valley Water District.
- 26 (86) Santa Clarita Valley Sanitation District.
- 27 (87) Santa Fe Irrigation District.
- 28 (88) Santa Margarita Water District.
- 29 (89) Sonoma County Water Agency.
- 30 (90) South Orange County Wastewater Authority.
- 31 (91) South Tahoe Public Utility District.
- 32 (92) Sunnyslope County Water District.



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- 1 (93) Town of Yountville.
- 2 (94) Tuolumne Utilities District.
- 3 (95) Upper San Gabriel Valley Municipal Water District.
- 4 (96) Valley Center Municipal Water District.
- 5 (97) Valley Sanitary District.
- 6 (98) Ventura County Waterworks District No. 8.
- 7 (99) Victor Valley Wastewater Reclamation Authority.
- 8 (100) West Basin Municipal Water District.
- 9 (101) West Bay Sanitary District.
- 10 (102) West County Wastewater District.
- 11 (103) Western Municipal Water District of Riverside County.
- 12 (104) Western Riverside County Regional Wastewater Authority.
- 13 (105) Yucaipa Valley Water District.

14 (c) Federal Support for Water Recycling Projects.—Water recycling  
15 and reuse projects described in subsection (b) may compete for funding  
16 authorized under the following sections of this title if the projects meet  
17 applicable eligibility requirements, subject to the condition that no  
18 particular project receive Federal grant funding from more than one  
19 Federal program:

20 (1) Section 101, which amends section 9504 (WaterSMART) of  
21 the Omnibus Public Land Management Act of 2009 (42 U.S.C.  
22 10364) and authorizes \$150,000,000 in additional Federal assistance  
23 for water storage and conveyance facilities, integrated regional water  
24 management, reclamation and recycling projects, and groundwater  
25 recharge.

26 (2) Section 123, which amends the Reclamation Wastewater and  
27 Groundwater Study and Facilities Act (43 U.S.C. 390h) and  
28 authorizes \$200,000,000 in Federal assistance for water recycling and  
29 reuse projects.

30 (3) Subtitle D, which authorizes the Secretary of the Interior to  
31 provide Federal assistance to finance the development of critical  
32 water resource infrastructure through loans and loan guarantees to  
33 qualified applicants.

34 (d) Federal Support for Desalination Projects.—

35 (1) ELIGIBILITY.—On submission of a completed feasibility report  
36 in accordance with Bureau of Reclamation standards, the Secretary of  
37 the Interior shall review requests for water desalination funding  
38 assistance and, subject to the availability of appropriations, award

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1 funding on a competitive basis for projects that meet the eligibility  
2 requirements of this title, subject to the condition that the Secretary  
3 shall include among the projects reviewed the following desalination  
4 projects referred to in the 2013 California Water Plan or in an  
5 integrated regional water management plan accepted by the State of  
6 California:

7 (A) Cambria Desalination Project.

8 (B) Camp Pendleton Seawater Desalination Project.

9 (C) Chino Basin Desalter 3.

10 (D) Doheny Ocean Desalination Project.

11 (E) GREAT Program Groundwater Desalination Facility  
12 Expansion.

13 (F) Huntington Beach Seawater Desalination Project.

14 (G) Irvine Non-Potable Shallow Groundwater Unit Desalter.

15 (H) Irvine Ranch Water District Wells 51, 52, 53, 21, and 22  
16 Potable (Non-exempt) Desalter Plant.

17 (I) Long Beach Seawater Desalination Project.

18 (J) Marina Desalination Facility Expansion.

19 (K) Mission Valley Brackish Groundwater Recovery Project.

20 (L) Monterey Bay Regional Water Project Desalination  
21 Facility (Moss Landing).

22 (M) Monterey Peninsula Water Supply Project.

23 (N) Monterey Peninsula Water Supply Project (Ocean  
24 Desalination/Groundwater Replenishment).

25 (O) Moorpark Groundwater Desalter.

26 (P) North Pleasant Valley Groundwater Desalter.

27 (Q) Oceanside Ocean Desalination Project (San Luis Rey  
28 Basin).

29 (R) Perris II Desalter.

30 (S) Ramona Desalting Facility.

31 (T) San Diego Formation/Balboa Park Groundwater  
32 Desalination Facility.

33 (U) San Elijo Valley Groundwater Project.

34 (V) San Pasqual Brackish Groundwater Recovery Project.

35 (W) Santa Cruz/Soquel Creek Water District Desalination  
36 Plant.

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(X) South Orange Coastal Ocean Desalination Project.

(Y) West Basin Seawater Desalination Regional Project.

(Z) West Simi Valley Desalter.

(AA) Bay Area Regional Desalination Project.

(2) FUNDING.—Desalination projects described in subsection (1) may compete for funding authorized under the following sections of this Title if the projects meet applicable eligibility requirements, subject to the condition that no particular project receive Federal grant funding from more than one Federal program:

(A) Section 101, which amends section 9504 (WaterSMART) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) and authorizes \$150,000,000 in additional Federal assistance for water storage and conveyance facilities, integrated regional water management, reclamation and recycling projects, and groundwater recharge.

(B) Section 122, which reauthorizes the Water Desalination Act of 1996 (42 U.S.C. 10301; Public Law 104-298) as amended, and authorizes \$100,000,000 in Federal assistance for desalination research, demonstration projects, and desalination project feasibility and design.

(C) Section 123, which amends the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h) and authorizes \$200,000,000 in Federal assistance for water recycling and reuse projects.

(D) Subtitle D, which authorizes the Secretary of the Interior to provide Federal assistance to finance the development of critical water resource infrastructure through loans and loan guarantees to qualified applicants.

## SEC. 122. REAUTHORIZATION OF WATER DESALINATION ACT.

(a) Authorization of Research and Studies.—

(1) IN GENERAL.—Section 3 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104-298) is amended by adding at the end the following:

“(e) Prioritization.—In carrying out this section, the Secretary of the Interior shall prioritize funding for research—

“(1) to reduce energy consumption and lower the cost of seawater and brackish water desalination;

“(2) to reduce the environmental impacts of seawater desalination,

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- 1 including subsurface intakes and other technological improvements,  
2 and develop technology and strategies to mitigate those impacts;
- 3 “(3) to improve existing reverse osmosis and membrane  
4 technology;
- 5 “(4) to carry out basic and applied research on next generation  
6 desalination technologies, including graphene membranes, forward  
7 osmosis, hybrid membrane-thermal desalination, improved energy  
8 recovery systems, and renewable energy-powered desalination  
9 systems that could significantly reduce desalination costs;
- 10 “(5) to develop portable or modular desalination units capable of  
11 providing temporary emergency water supplies for domestic or  
12 military deployment purposes; and
- 13 “(6) to encourage development of desalination siting plans,  
14 including maps of preferred and priority locations, by States that  
15 consider local and regional water supply needs and sources, potential  
16 impacts on coastal and ocean resources and fisheries, the effects of  
17 sea level rise and other factors that affect project siting.”.
- 18 (b) Desalination Demonstration and Development.—Section 4 of the  
19 Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–  
20 298) is amended—
- 21 (1) in subsection (a)—
- 22 (A) by redesignating paragraphs (2) and (3) as paragraphs (3)  
23 and (4), respectively; and
- 24 (B) by inserting after paragraph (1) the following:
- 25 “(2) FEASIBILITY AND DESIGN.—Award grants and enter into  
26 contracts with non-Federal project sponsors to provide financial  
27 assistance to study the feasibility and support the design of  
28 desalination facilities (including associated water distribution  
29 infrastructure) that provide usable water.”; and
- 30 (2) by adding at the end the following:
- 31 “(c) Prioritization.—In carrying out demonstration and development  
32 activities under subsection (a), the Secretary of the Interior shall prioritize  
33 projects—
- 34 “(1) in drought-stricken States and communities;
- 35 “(2) in States for which funding has been authorized for  
36 desalination demonstration and development projects; and
- 37 “(3) that can reduce reliance on imported water supplies that have  
38 an impact on species listed under the Endangered Species Act of  
39 1973 (16 U.S.C. 1531 et seq.).
- 40 “(d) Criteria for Eligibility.—In carrying out this section, the Secretary

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of the Interior shall establish criteria to determine projects eligible for grant funding based on the ability of the projects to provide regional water supply benefits, including—

“(1) improving water supply reliability in regions subject to frequent and severe drought;

“(2) enhancement of public health, safety, ecosystems, and watershed sustainability;

“(3) preservation of groundwater through reduction of withdrawals from aquifers;

“(4) offsetting demand for water conveyed from environmentally sensitive areas outside service area of the project; and

“(5) mitigation of saltwater intrusion to aquifers.”.

(c) Cost Sharing.—Section 7 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) in the first sentence, by striking “The Federal share” and inserting the following:

“(a) Maximum.—

“(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b) and limited to the 5 years following the date of enactment of the California Emergency Drought Relief Act, the Federal share”;

(2) in the second sentence, by striking “A Federal” and inserting the following:

“(b) Feasibility Determination.—A Federal”;

(3) in the third sentence, by striking “The Secretary” and inserting the following:

“(c) Procedures.—The Secretary”;

(4) in the fourth sentence, by striking “Costs” and inserting the following:

“(d) Operation, Maintenance, Repair, and Rehabilitation.—The costs”;  
and

(5) in subsection (a) (as designated by paragraph (1)), by adding at the end the following:

“(2) EXCEPTION.—The Federal share of the cost of project design under section 4 shall not exceed 25 percent of the total cost of the project design.”.

(d) Authorization of Appropriations.—In order to advance water desalination research and project development, Section 8 of the Water

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Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) in subsection (a), in the first sentence—

(A) by striking “\$5,000,000” and inserting “\$10,000,000”;  
and

(B) by striking “2013” and inserting “2020”; and

(2) in subsection (b), by striking “\$3,000,000 for each of fiscal years 2012 through 2013” and inserting “\$50,000,000 for the period of fiscal years 2016 through 2020”.

(e) Consultation.—Section 9 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) by striking the section designation and heading and all that follows through “In carrying out the provisions of” in the first sentence and inserting the following:

### “SEC. 9. CONSULTATION AND COORDINATION.

“(a) Consultation.—In carrying out”;

(2) in the second sentence, by striking “The authorization” and inserting the following:

“(b) Other Desalination Programs.—The authorization”; and

(3) by inserting after subsection (b) (as so designated) the following:

“(c) Coordination of Federal Desalination Research and Development.—For the effective period of the California Emergency Drought Relief Act, the White House Office of Science and Technology Policy shall develop a coordinated strategic plan that—

“(1) establishes priorities for future Federal investments in desalination; and

“(2) coordinates the activities of Federal agencies involved in desalination, including the Bureau of Reclamation, the National Science Foundation, the Office of Naval Research of the Department of Defense, the National Laboratories of the Department of Energy, the United States Geological Survey, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration.”.

### SEC. 123. NEW WATER RECYCLING AND REUSE PROJECTS.

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Section 1602 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h) is amended by adding at the end the following:

“(e) Authorization of New Water Recycling and Reuse Projects.—

“(1) IN GENERAL.—A non-Federal interest may submit to the Secretary of the Interior proposals for eligible projects in the form of completed feasibility studies.

“(2) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of the Interior may provide financial assistance under this subtitle to carry out projects within—

“(A) any Reclamation State, including—

“(i) Arizona;

“(ii) California;

“(iii) Colorado;

“(iv) Idaho;

“(v) Kansas;

“(vi) Montana;

“(vii) Nebraska;

“(viii) Nevada;

“(ix) New Mexico;

“(x) North Dakota;

“(xi) Oklahoma;

“(xii) Oregon;

“(xiii) South Dakota;

“(xiv) Texas;

“(xv) Utah;

“(xvi) Washington; and

“(xvii) Wyoming; and

“(B) the States of Alaska and Hawaii.

“(3) ELIGIBLE PROJECTS.—A project shall be considered to be eligible for consideration under this subsection if the project reclaims and reuses—

“(A) municipal, industrial, domestic, or agricultural wastewater; or

“(B) impaired groundwater or surface water.



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1 “(4) REVIEW.—The Secretary of the Interior shall review each  
2 feasibility study received under paragraph (1) to determine whether  
3 the study, and the process under which the study was developed,  
4 comply with Federal laws (including regulations) applicable to  
5 feasibility studies of water recycling and reuse projects.

6 “(f) Competitive Grant Funding of Water Recycling and Reuse  
7 Projects.—

8 “(1) IN GENERAL.—The Secretary of the Interior shall administer a  
9 competitive grant program under which the non-Federal project  
10 sponsor of any project determined by the Secretary of the Interior to  
11 be feasible under subsection (e)(4) shall be eligible to apply for  
12 funding for the planning, design, and construction of the project.

13 “(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
14 be appropriated to the Secretary of the Interior to carry out this  
15 subsection \$200,000,000, to remain available until expended.”.

## 21 SEC. 124. PROMOTING WATER 22 EFFICIENCY WITH WATERSENSE.

23 (a) Authorization.—The Administrator of the Environmental Protection  
24 Agency (referred to in this section as the “Administrator”) is authorized to  
25 continue to carry out the voluntary program, known as the “WaterSense  
26 Program”, to identify and promote water efficient products, buildings,  
27 landscapes, facilities, processes, and services so as—

28 (1) to reduce water use;

29 (2) to reduce the strain on water, wastewater, and stormwater  
30 infrastructure;

31 (3) to conserve energy used to pump, heat, transport, and treat  
32 water; and

33 (4) to preserve water resources for future generations, through  
34 voluntary labeling of, or other forms of communications regarding,  
35 products, buildings, landscapes, facilities, processes, and services that  
36 meet the highest water efficiency and performance criteria.

37 (b) Review.—Not less frequently than once every 4 years, the  
38 Administrator shall regularly review and, if appropriate, update  
39 WaterSense criteria that have been adopted for the voluntary labeling of  
40 categories of products, buildings, landscapes, facilities, processes, and  
41 services.



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(c) Transparency.—The Administrator shall, to the maximum extent practicable, regularly estimate and make available to the public the production and relative market shares of, and the savings of water, energy, and capital costs of water, wastewater, and stormwater infrastructure attributable to the use of WaterSense-labeled products, buildings, landscapes, facilities, processes, and services, at least annually.

(d) Public Comment.—Prior to establishing or revising a WaterSense category, specification, installation criterion, or other criterion, the Administrator shall—

(1) solicit comments from interested parties and the public; and

(2) provide reasonable notice to interested parties and the public of any changes (including effective dates), on the adoption of a new or revised category, specification, installation criterion, or other criterion.

(e) Authorization of Appropriations.—There is authorized to be appropriated to carry out the WaterSense program of the Environmental Protection Agency \$2,500,000 for each of fiscal years 2016 through 2019.

### Subtitle D—Reclamation Infrastructure Finance and Innovation

#### SEC. 131. PURPOSES.

The purposes of this subtitle are—

(1) to promote increased development of critical water resources infrastructure by establishing additional opportunities for financing water resources projects;

(2) to attract new investment capital to infrastructure projects that are capable of generating revenue streams through user fees or other dedicated funding sources;

(3) to complement existing Federal funding sources and address budgetary constraints on Bureau of Reclamation programs; and

(4) to leverage private investment in water resources infrastructure.

#### SEC. 132. DEFINITIONS.

In this subtitle:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) a corporation;

(B) a partnership;

(C) a joint venture;

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1 (D) a trust;

2 (E) a State, or local governmental entity, agency, or  
3 instrumentality; and

4 (F) a conservancy district, irrigation district, canal company,  
5 mutual water company, water users' association, Indian tribe,  
6 agency created by interstate compact, or any other entity that has  
7 the capacity to contract with the United States under the  
8 reclamation laws.

9 (2) FEDERAL CREDIT INSTRUMENT.—The term “Federal credit  
10 instrument” means a secured loan or loan guarantee authorized to be  
11 made available under this title with respect to a project.

12 (3) INVESTMENT-GRADE RATING.—The term “investment-grade  
13 rating” means a rating of BBB minus, Baa3, bbb minus, BBB (low),  
14 or higher as assigned by a rating agency to project obligations.

15 (4) LENDER.—

16 (A) IN GENERAL.—The term “lender” means any non-Federal  
17 qualified institutional buyer (as defined in section 230.144A(a)  
18 of title 17, Code of Federal Regulations (or a successor  
19 regulation) (commonly known as “Rule 144A(a) of the  
20 Securities and Exchange Commission” and issued under the  
21 Securities Act of 1933 (15 U.S.C. 77a et seq.))).

22 (B) INCLUSIONS.—The term “lender” includes—

23 (i) a qualified retirement plan (as defined in section 4974  
24 of the Internal Revenue Code of 1986) that is a qualified  
25 institutional buyer; and

26 (ii) a governmental plan (as defined in section 414 of the  
27 Internal Revenue Code of 1986) that is a qualified  
28 institutional buyer.

29 (5) LOAN GUARANTEE.—The term “loan guarantee” means any  
30 guarantee or other pledge by the Secretary of the Interior to pay all or  
31 part of the principal of, and interest on, a loan or other debt obligation  
32 issued by an obligor and funded by a lender.

33 (6) OBLIGOR.—The term “obligor” means an eligible entity that is  
34 primarily liable for payment of the principal of, or interest on, a  
35 Federal credit instrument.

36 (7) PROJECT OBLIGATION.—

37 (A) IN GENERAL.—The term “project obligation” means any  
38 note, bond, debenture, or other debt obligation issued by an  
39 obligor in connection with the financing of a project.

40 (B) EXCLUSION.—The term “project obligation” does not

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1 include a Federal credit instrument.

2 (8) RATING AGENCY.—The term “rating agency” means a credit  
3 rating agency registered with the Securities and Exchange  
4 Commission as a nationally recognized statistical rating organization  
5 (as defined in section 3(a) of the Securities Exchange Act of 1934 (15  
6 U.S.C. 78c(a)).

7 (9) RECLAMATION STATE.—The term “Reclamation State” means  
8 any of the States of—

9 (A) Arizona;

10 (B) California;

11 (C) Colorado;

12 (D) Idaho;

13 (E) Kansas;

14 (F) Montana;

15 (G) Nebraska;

16 (H) Nevada;

17 (I) New Mexico;

18 (J) North Dakota;

19 (K) Oklahoma;

20 (L) Oregon;

21 (M) South Dakota;

22 (N) Texas;

23 (O) Utah;

24 (P) Washington; and

25 (Q) Wyoming.

26 (10) SECURED LOAN.—The term “secured loan” means a direct  
27 loan or other debt obligation issued by an obligor and funded by the  
28 Secretary in connection with the financing of a project under subtitle  
29 A.

30 (11) SUBSIDY AMOUNT.—The term “subsidy amount” means the  
31 amount of budget authority sufficient to cover the estimated long-  
32 term cost to the Federal Government of a Federal credit instrument,  
33 as calculated on a net present value basis, excluding administrative  
34 costs and any incidental effects on Governmental receipts or outlays  
35 in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C.  
36 661 et seq.).

37 (12) SUBSTANTIAL COMPLETION.—The term “substantial

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completion”, with respect to a project, means the earliest date on which a project is considered to perform the functions for which the project is designed.

### SEC. 133. AUTHORITY TO PROVIDE ASSISTANCE.

The Secretary of the Interior may provide financial assistance under this subtitle to carry out projects within—

- (1) any Reclamation State;
- (2) any other State in which the Bureau of Reclamation is authorized to provide project assistance; and
- (3) the States of Alaska and Hawaii.

### SEC. 134. APPLICATIONS.

To be eligible to receive assistance under this subtitle, an eligible entity shall submit to the Secretary of the Interior an application at such time, in such manner, and containing such information as the Secretary of the Interior may require.

### SEC. 135. ELIGIBILITY FOR ASSISTANCE.

(a) Eligible Projects.—The following non-federally owned projects that contribute to a safe, adequate water supply for domestic, agricultural, environmental, or municipal and industrial use may be carried out using assistance made available under this subtitle:

- (1) A project for the reclamation and reuse of wastewater, and naturally impaired ground and surface waters, which has a completed feasibility study that complies with Reclamation standards.
- (2) A new water infrastructure facility project, including a water conduit, pipeline, canal, pumping, power, and associated facilities.
- (3) A project for accelerated repair and replacement of an aging water distribution facility.
- (4) A brackish or sea water desalination project.
- (5) A project for groundwater replenishment, groundwater storage, or surface storage.
- (6) A combination of projects, each of which is eligible under paragraphs (1) through (5), for which an eligible entity or group of eligible entities submits a single application.

(b) Activities Eligible for Assistance.—For purposes of this subtitle, an eligible activity with respect to an eligible project under subsection (a) includes the cost of—

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(1) development-phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(2) construction, reconstruction, rehabilitation, and replacement activities;

(3) the acquisition of real property (including water rights, land relating to the project, and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment subject to subsection (c);

(4) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction; and

(5) refinancing interim construction funding, existing long-term project obligations, or a secured loan or loan guarantee made under this subtitle.

(c) Limitation on Use.—The proceeds from Federal credit instruments made available under this subtitle may only be used to acquire non-Federal land or interest in land from a willing seller, when the seller does not contest the purchase or price paid.

## SEC. 136. DETERMINATION OF ELIGIBILITY AND PROJECT SELECTION.

(a) Eligibility Requirements.—To be eligible to receive financial assistance under this subtitle, a project shall meet the following criteria, as determined by the Secretary of the Interior:

### (1) CREDITWORTHINESS.—

(A) IN GENERAL.—Subject to subparagraph (B), the project shall be creditworthy, as determined by the Secretary of the Interior, who shall ensure that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(B) PRELIMINARY RATING OPINION LETTER.—The Secretary of the Interior shall require each applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicating that the senior obligations of the project (which may be the Federal credit instrument) have the potential to achieve an investment-grade rating.

(2) ELIGIBLE PROJECT COSTS.—The eligible project costs of a project shall be reasonably anticipated to be not less than \$20,000,000.

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1 (3) DEDICATED REVENUE SOURCES.—The Federal credit instrument  
2 for the project shall be repayable, in whole or in part, from dedicated  
3 revenue sources that also secure the project obligations.

4 (4) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—A project carried  
5 out by a private entity shall be sponsored by a State, department of a  
6 State, subdivision of a State, or a public agency organized pursuant to  
7 State law.

8 (b) Selection Criteria.—

9 (1) ESTABLISHMENT.—The Secretary of the Interior shall establish  
10 criteria for the selection of projects that meet the eligibility  
11 requirements of subsection (a), in accordance with paragraph (2).

12 (2) CRITERIA.—The selection criteria shall include the following:

13 (A) The extent to which a project serves a region with  
14 significant water resources challenges.

15 (B) The extent to which the project is nationally or regionally  
16 significant.

17 (C) The extent to which assistance under this section would  
18 foster innovative public-private partnerships and attract private  
19 debt or equity investment.

20 (D) The extent to which the project fosters—

21 (i) collaborative partnerships between cities, counties,  
22 water districts, and State and Federal agencies; and

23 (ii) innovative recycling programs that augment a  
24 combination of industrial, commercial, residential, and  
25 agricultural uses.

26 (E) The likelihood that assistance under this section would  
27 enable the project to proceed at an earlier date than the project  
28 would otherwise be able to proceed.

29 (F) The amount of budget authority required to fund the  
30 Federal credit instrument made available under this subtitle.

31 (G) The extent to which the project helps maintain or protect  
32 the environment.

33 (3) CONSISTENCY OF CRITERIA.—Not later than 180 days after the  
34 date of enactment of this Act, the Secretary of the Interior shall issue  
35 eligibility requirements under this title for water recycling projects  
36 that reclaim and reuse municipal, industrial, domestic, or agricultural  
37 wastewater or impaired ground or surface waters.

38 (c) Receipt of Other Federal Funding.—Receipt of a Federal grant or  
39 contract or other Federal funding to support an eligible project shall not  
40 preclude the project from being eligible for assistance under this subtitle.

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Assistance under this subtitle shall not be counted as Federal funding under cost-sharing requirements otherwise applicable to a project eligible for assistance under this subtitle.

### SEC. 137. SECURED LOANS.

#### (a) Agreements.—

(1) IN GENERAL.—Subject to paragraphs (2) through (4), the Secretary of the Interior may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 136;

(B) to refinance interim construction financing of eligible project costs of any project selected under section 136; or

(C) to refinance long-term project obligations or Federal credit instruments, if that refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 136; or

(ii) otherwise meets the requirements of section 136.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A secured loan under paragraph (1) shall not be used to refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the applicable project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection for a secured loan, the Secretary of the Interior, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 136(a)(1)(B), shall determine an appropriate capital reserve subsidy amount for the secured loan, taking into account each such preliminary rating opinion letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The execution of a secured loan under this section shall be contingent on receipt by the senior obligations of the project of an investment-grade rating.

#### (b) Terms and Limitations.—

(1) IN GENERAL.—A secured loan provided for a project under this section shall be subject to such terms and conditions, and contain such covenants, representations, warranties, and requirements (including requirements for audits), as the Secretary of the Interior determines to be appropriate.



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(2) NONSUBORDINATION.—A secured loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor of the project.

(3) MAXIMUM AMOUNT.—The amount of a secured loan under this section shall not exceed the lesser of—

(A) an amount equal to 49 percent of the reasonably anticipated eligible project costs; and

(B) if the secured loan does not receive an investment-grade rating, an amount equal to other project obligations that have received an investment-grade rating.

(4) PAYMENT.—A secured loan under this section—

(A) shall be payable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the relevant project;

(B) shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(C) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

(5) INTEREST RATE.—The interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(6) MATURITY DATE.—The final maturity date of a secured loan under this section shall be not later than 35 years after the date of substantial completion of the relevant project.

(7) FEES.—The Secretary of the Interior may establish fees, in accordance with section 138(b)(2) at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this section may be used to pay any non-Federal share of project costs required if the loan is repayable from non-Federal funds.

(9) MAXIMUM FEDERAL INVOLVEMENT.—The total amount of Federal assistance provided for a project for which assistance is provided under this subtitle from all sources (including this subtitle) shall not exceed 80 percent of the total cost of the project.

(c) Repayment.—

(1) SCHEDULE.—The Secretary of the Interior shall establish a repayment schedule for each secured loan provided under this



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section, based on the projected cash flow from project revenues and other repayment sources.

(2) COMMENCEMENT.—Scheduled loan repayment of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project, with interest accruing during those 5 years and during construction.

(3) DEFERRED PAYMENTS.—

(A) AUTHORIZATION.—If, at any time after the date of substantial completion of a project for which a secured loan is provided under this section, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary of the Interior may allow the obligor, subject to subparagraph (C), to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(5) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the secured loan.

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting such criteria as the Secretary of the Interior may establish.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay a secured loan under this section without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—A secured loan under this section may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

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1 (d) Sale of Secured Loans.—

2 (1) IN GENERAL.—Subject to paragraph (2), as soon as practicable  
3 after the date of substantial completion of a project and after  
4 providing a notice to the obligor, the Secretary of the Interior may  
5 sell to another entity or reoffer into the capital markets a secured loan  
6 for a project under this section, if the Secretary of the Interior  
7 determines that the sale or reoffering can be made on favorable terms.

8 (2) CONSENT OF OBLIGOR.—In making a sale or reoffering under  
9 paragraph (1), the Secretary of the Interior may not change the  
10 original terms and conditions of the secured loan without the written  
11 consent of the obligor.

12 (e) Loan Guarantees.—

13 (1) IN GENERAL.—The Secretary of the Interior may provide a loan  
14 guarantee to a lender in lieu of making a secured loan under this  
15 section, if the Secretary of the Interior determines that the budgetary  
16 cost of the loan guarantee is substantially the same as that of a  
17 secured loan.

18 (2) TERMS.—The terms of a loan guarantee provided under this  
19 subsection shall be consistent with the terms established in this  
20 section for a secured loan, except that the rate on the guaranteed loan  
21 and any prepayment features shall be negotiated between the obligor  
22 and the lender, with the consent of the Secretary of the Interior.

23 **SEC. 138. PROGRAM ADMINISTRATION.**

24 (a) Requirement.—The Secretary of the Interior shall establish a  
25 uniform system to service the Federal credit instruments made available  
26 under this subtitle.

27 (b) Reclamation Loan Finance Capital Reserve Fund.—

28 (1) ESTABLISHMENT.—

29 (A) IN GENERAL.—There is established in the Treasury of the  
30 United States a fund, to be known as the “Reclamation Loan  
31 Finance Capital Reserve Fund”.

32 (B) DEPOSITS TO FUND.—The Secretary of the Treasury shall  
33 deposit in the fund established by subparagraph (A) an amount  
34 equal to the amount of capital reserve fees collected under  
35 paragraph (2) for each applicable fiscal year.

36 (C) TREATMENT.—The amounts deposited in the fund under  
37 subparagraph (B) shall be credited as offsetting collections.

38 (2) CAPITAL RESERVE FEES.—

39 (A) IN GENERAL.—To the extent required by appropriations

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Acts, the Secretary of the Interior may assess, collect, and spend capital reserve fees at a level that is sufficient to cover all or a portion of the costs to the Federal Government of servicing the Federal credit instruments provided under this subtitle, including all or a portion of the outlays associated with the provision of the Federal credit instruments under this subtitle.

(B) AMOUNT.—The capital reserve fees under this paragraph shall be established at amounts that will result in the collection, during each fiscal year, of an amount that can be reasonably expected to equal the outlays associated with the provision of the Federal credit instruments under this subtitle.

(c) Servicer.—

(1) IN GENERAL.—The Secretary of the Interior may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments provided under this subtitle.

(2) DUTIES.—A servicer appointed under paragraph (1) shall act as the agent for the Secretary of the Interior.

(3) FEE.—A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary of the Interior.

## SEC. 139. STATE AND LOCAL PERMITS.

(a) Establishment of Pilot Program.—

(1) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the provisions of the pilot program established by this section, the Secretary of the Interior and a State identified pursuant to subsection (b) may enter into a written agreement, which may be in the form of a memorandum of understanding, under which the Secretary of the Interior may designate the State as lead agency for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—If designated as the lead agency under subparagraph (A), the State shall assume responsibility under this section, subject to the same procedural and substantive requirements that would apply if that responsibility were carried out by the Secretary of the Interior.

(2) PRESERVATION OF FEDERAL RESPONSIBILITY AND AUTHORITY.—

(A) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary of the Interior not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary of the Interior.

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1 (B) NO EFFECT ON AUTHORITY.—Nothing in this section  
2 preempts or interferes with any power, jurisdiction,  
3 responsibility, or authority of an agency, other than the  
4 Department of the Interior, under applicable law (including  
5 regulations) with respect to a project.

6 (3) PRESERVATION OF FLEXIBILITY.—The Secretary of the Interior  
7 may not require a State, as a condition of participation and assuming  
8 lead agency status in the pilot program under this section, to forego  
9 project delivery methods that are otherwise permissible for projects.

10 (b) State Participation.—

11 (1) PARTICIPATING STATES.—The Secretary of the Interior shall  
12 permit the State of California, and not more than 4 additional States,  
13 to participate in the pilot program under this section, subject to the  
14 limitations described in paragraph (4).

15 (2) APPLICATION.—Not later than 270 days after the date of  
16 enactment of this Act, the Secretary of the Interior shall amend, as  
17 appropriate, regulations that establish requirements relating to  
18 information required to be contained in an application of a State to  
19 participate in the pilot program under this section and to assume lead  
20 agency status, including, at a minimum—

21 (A) the projects or classes of projects for which the State  
22 anticipates exercising the authority that may be granted under  
23 the pilot program under this section;

24 (B) verification of the financial, regulatory, and enforcement  
25 resources necessary to carry out the authority that may be  
26 granted under the pilot program under this section; and

27 (C) evidence of the notice and solicitation of public comment  
28 by the State relating to participation of the State in the pilot  
29 program under this section, including copies of comments  
30 received from that solicitation.

31 (3) PUBLIC NOTICE.—

32 (A) IN GENERAL.—A State that submits an application under  
33 this subsection shall give notice of the intent of the State to  
34 participate in the pilot program under this section not later than  
35 30 days before the date of submission of the application.

36 (B) METHOD OF NOTICE AND SOLICITATION.—A State shall  
37 provide notice and solicit public comment under this paragraph  
38 by publishing the complete application of the State in  
39 accordance with the appropriate public notice State law.

40 (4) SELECTION CRITERIA.—The Secretary of the Interior may  
41 approve the application of a State under this section only if—

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1 (A) the regulatory requirements of paragraph (2) have been  
2 met;

3 (B) the Secretary of the Interior determines that the State has  
4 the capability, including financial, regulatory, and enforcement  
5 capability and personnel, to assume the responsibility of a lead  
6 agency for the project; and

7 (C) the head of the State agency with primary jurisdiction  
8 over water infrastructure matters enters into a written agreement  
9 with the Secretary of the Interior described in subsection (c).

10 (c) Written Agreement.—A written agreement under this section  
11 shall—

12 (1) be executed by the Governor or the top ranking water  
13 infrastructure official in the State who is charged with responsibility  
14 for water infrastructure construction;

15 (2) be in such form as the Secretary of the Interior may prescribe;

16 (3) provide that the State—

17 (A) agrees to assume all or part of the responsibilities of the  
18 Secretary of the Interior described in subsection (a), including  
19 all responsibilities as a lead agency;

20 (B) expressly consents, on behalf of the State, to accept the  
21 jurisdiction of the Federal courts for the compliance, discharge,  
22 and enforcement of any responsibility of the Secretary of the  
23 Interior assumed by the State;

24 (C) certifies that State laws (including regulations) are in  
25 effect that authorize the State to take the actions necessary to  
26 carry out the responsibilities being assumed; and

27 (D) agrees to maintain the financial resources necessary to  
28 carry out the responsibilities being assumed;

29 (4) require the State to provide to the Secretary of the Interior any  
30 information that the Secretary of the Interior considers necessary to  
31 ensure that the State is adequately carrying out the responsibilities  
32 assigned to the State;

33 (5) have a term of not more than 5 years; and

34 (6) be renewable.

35 (d) Jurisdiction.—

36 (1) IN GENERAL.—The United States district courts shall have  
37 exclusive jurisdiction over any civil action against a State for failure  
38 to carry out any responsibility of the State under this section.

39 (2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under

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paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary of the Interior if the Secretary of the Interior had taken the actions in question.

(3) INTERVENTION.—The Secretary of the Interior shall have the right to intervene in any action described in paragraph (1).

(e) Effect of Assumption of Responsibility.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary of the Interior, the responsibilities assumed under subsection (a), until the pilot program is terminated as provided in subsection (h).

(f) Audits.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the pilot program under this section, the Secretary of the Interior shall conduct—

(A) semiannual audits during each of the first 2 years of State participation; and

(B) annual audits during of the third and fourth years of State participation.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be made available to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary of the Interior shall respond to public comments received under subparagraph (A).

(g) Monitoring.—After the fourth year of the participation of a State in the pilot program, the Secretary of the Interior shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(h) Termination.—

(1) TERMINATION BY SECRETARY OF THE INTERIOR.—The Secretary of the Interior may terminate the participation of any State in the pilot program if—

(A) the Secretary of the Interior determines that the State is not adequately carrying out the responsibilities assigned to the State;

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- 1 (B) the Secretary of the Interior provides to the State—  
2 (i) notification of the determination of noncompliance;  
3 and  
4 (ii) a period of at least 30 days during which to take such  
5 corrective action as the Secretary of the Interior determines  
6 is necessary to comply with the applicable agreement; and  
7 (C) the State, after the notification and period provided under  
8 subparagraph (B), fails to take satisfactory corrective action, as  
9 determined by Secretary of the Interior.
- 10 (2) TERMINATION BY STATE.—The State may terminate the  
11 participation of the State in the pilot program at any time by  
12 providing to the Secretary of the Interior a notice by not later than the  
13 date that is 90 days before the date of termination, and subject to such  
14 terms and conditions as the Secretary of the Interior may provide.
- 15 (i) Limitations on Agreements.—Nothing in this section or pilot  
16 program—  
17 (1) authorizes a State to assume any rulemaking authority of the  
18 Secretary of the Interior under any Federal law;  
19 (2) relieves any recipient of the assistance of any obligation to  
20 obtain any other required State or local permit or approval with  
21 respect to the project;  
22 (3) limits the right of any unit of State or local government to  
23 approve or regulate any rate of return on private equity invested in  
24 the project; or  
25 (4) otherwise supersedes any State or local law (including any  
26 regulation) applicable to the construction or operation of the project.

## 27 SEC. 140. REGULATIONS.

28 The Secretary of the Interior may promulgate such regulations as the  
29 Secretary of the Interior determines to be appropriate to carry out this  
30 subtitle.

## 31 SEC. 141. FUNDING.

- 32 (a) In General.—There is authorized to be appropriated to the Secretary  
33 of the Interior to carry out this subtitle \$200,000,000.
- 34 (b) Offset Required.—No funds made available under this section may  
35 be used to provide financial assistance under this subtitle unless sufficient  
36 funds have been appropriated to offset any decrease in Federal revenue  
37 resulting from the use by any unit of State or local government of  
38 proceeds of any obligation—  
39 (1) the interest on which is exempt from the tax imposed under



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1 chapter 1 of the Internal Revenue Code of 1986; or

2 (2) with respect to which credit is allowable under subpart I or J of  
3 part IV of subchapter A of chapter 1 of that Code.

4 (c) Administrative Costs.—Of the funds made available to carry out this  
5 subtitle, the Secretary of the Interior may use for the administration of this  
6 subtitle not more than \$2,200,000 for each of fiscal years 2016 through  
7 2020.

## 8 TITLE II—LISTED SPECIES AND WILDLIFE

### 9 SEC. 201. ACTIONS TO BENEFIT 10 ENDANGERED FISH POPULATIONS.

11 (a) Findings.—Congress finds that—

12 (1) minimizing or eliminating stressors to fish and their habitat in  
13 an efficient and structured manner is a key aspect of a fish recovery  
14 strategy;

15 (2) functioning, diverse, and interconnected habitats are necessary  
16 for a species to be viable; and

17 (3) providing for increased fish habitat may not only allow for a  
18 more robust fish recovery, but also reduce impacts to water supplies.

19 (b) Actions for Benefit of Endangered Species.—There is authorized to  
20 be appropriated the following amounts:

21 (1) \$35,000,000 for the Secretary of Commerce, through the  
22 Administrator of the National Oceanic and Atmospheric  
23 Administration, to carry out the following activities in accordance  
24 with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.):

25 (A) Gravel and rearing area additions and habitat restoration  
26 to the Sacramento River to benefit Chinook salmon and  
27 steelhead trout.

28 (B) Alternative methods, models, and equipment to improve  
29 temperature modeling and related forecasted information for  
30 purposes of predicting impacts to salmon and salmon habitat as  
31 a result of water management at Shasta.

32 (C) Methods to improve the Delta salvage systems, including  
33 alternative methods to redeposit salvaged salmon smolts and  
34 other fish from the Delta in a manner that reduces predation  
35 losses.

36 (2) \$6,000,000 for the Secretary of the Interior to conduct the Delta  
37 smelt distribution study referenced in section 301.

38 (c) Commencement.—If the Administrator of the National Oceanic and



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1 Atmospheric Administration determines that a proposed activity is feasible  
2 and beneficial for protecting and recovering a fish population, the  
3 Administrator shall commence implementation of the activity by not later  
4 than 1 year after the date of enactment of this Act.

5 (d) Consultation.—The Administrator shall take such steps as are  
6 necessary to partner with, and coordinate the efforts of, the Department of  
7 the Interior, the Department of Commerce, and other relevant Federal  
8 departments and agencies to ensure that all Federal reviews, analyses,  
9 opinions, statements, permits, licenses, and other approvals or decisions  
10 required under Federal law are completed on an expeditious basis,  
11 consistent with Federal law.

12 (e) Trap and Barge Pilot Program.—

13 (1) IN GENERAL.—The Department of Commerce, in collaboration  
14 with the Department of the Interior, the California Department of  
15 Fish and Wildlife, applicable water agencies, and other interested  
16 parties, shall design, permit, implement, and evaluate a pilot program  
17 to test the efficacy of an experimental trap and barge program to  
18 improve survival of juvenile salmonids emigrating from the San  
19 Joaquin watershed through the Delta.

20 (2) PLAN.—

21 (A) WORKING GROUP.—Not later than 30 days after the date  
22 of enactment of this Act, the Assistant Administrator and the  
23 Commissioner shall convene a working group, to be comprised  
24 of representatives of relevant agencies and other interested  
25 parties, to develop and execute a plan for the design, budgeting,  
26 implementation, and evaluation of the pilot program under this  
27 subsection, using such existing expertise regarding trap and  
28 barge programs as may be available.

29 (B) REQUIREMENTS.—The plan under this paragraph shall—

30 (i) include a schedule and budget for the pilot program;  
31 and

32 (ii) identify the responsible parties for each element of  
33 the program.

34 (3) IMPLEMENTATION.—The Assistant Administrator and the  
35 Commissioner shall seek to commence implementation of the pilot  
36 program under this subsection during calendar year 2016, if  
37 practicable.

38 (4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
39 be appropriated to carry out this subsection \$4,000,000.

40 (f) Conservation Fish Hatcheries.—

41 (1) IN GENERAL.—Not later than 2 years after the date of enactment

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of this Act, the Secretaries of the Interior and Commerce, in coordination with the Director of the California Department of Fish and Wildlife, shall develop and implement as necessary the expanded use of conservation hatchery programs to enhance, supplement, and rebuild Delta smelt and Endangered Species Act-listed fish species under the smelt and salmonid biological opinions.

(2) REQUIREMENTS.—The conservation hatchery programs established under paragraph (1) and the associated hatchery and genetic management plans shall be designed—

(A) to benefit, enhance, support, and otherwise recover naturally spawning fish species to the point where the measures provided under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) are no longer necessary; and

(B) to minimize adverse effects to Central Valley Project and State Water Project operations.

(3) PRIORITY; COOPERATIVE AGREEMENTS.—In implementing this section, the Secretaries of the Interior and Commerce—

(A) shall give priority to existing and prospective hatchery programs and facilities within the Delta and the riverine tributaries thereto; and

(B) may enter into cooperative agreements for the operation of conservation hatchery programs with States, Indian tribes, and other nongovernmental entities for the benefit, enhancement, and support of naturally spawning fish species.

(g) Acquisition of Land, Water, or Interests From Willing Sellers for Environmental Purposes in California.—

(1) IN GENERAL.—The Secretary of the Interior is authorized to acquire by purchase, lease, donation, or otherwise, land, water, or interests in land or water from willing sellers in California—

(A) to benefit listed or candidate species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the California Endangered Species Act (California Fish and Game Code sections 2050 through 2116);

(B) to meet requirements of, or otherwise provide water quality benefits under, the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or the Porter Cologne Water Quality Control Act (division 7 of the California Water Code); or

(C) for protection and enhancement of the environment, as determined by the Secretary of the Interior.

(2) FINANCIAL ASSISTANCE.—In implementing this section, the Secretary of the Interior is authorized to provide financial assistance

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to the State of California or otherwise hold such interests in joint ownership with the State of California based on a cost share deemed appropriate by the Secretary.

(3) TREATMENT.—Any expenditures under this subsection shall be nonreimbursable and nonreturnable to the United States.

### SEC. 202. ACTIONS TO BENEFIT REFUGES.

(a) In General.—In addition to funding under section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726), there is authorized to be appropriated to the Secretary of the Interior \$2,000,000 for each of fiscal years 2016 through 2020 for the acceleration and completion of water infrastructure and conveyance facilities necessary to achieve full water deliveries to Central Valley wildlife refuges and habitat areas pursuant to section 3406(d) of that Act (Public Law 102–575; 106 Stat. 4722).

(b) Cost-sharing.—

(1) FEDERAL SHARE.—The Federal share of the cost of carrying out an activity described in this section shall be not more than 50 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of carrying out an activity described in this section—

(A) shall be not less than 50 percent; and

(B) may be provided in cash or in-kind.

### SEC. 203. NON-FEDERAL PROGRAM TO PROTECT NATIVE ANADROMOUS FISH IN STANISLAUS RIVER.

(a) Definition of District.—In this section, the term “district” means—

(1) the Oakdale Irrigation District of the State of California; and

(2) the South San Joaquin Irrigation District of the State of California.

(b) Establishment.—The Secretary of Commerce, acting through the Assistant Administrator of the National Marine Fisheries Service, and the districts, in consultation with the Director of the California Department of Fish and Wildlife, shall jointly establish and conduct a nonnative predator research and pilot fish removal program to study the effects of removing from the Stanislaus River—

(1) nonnative striped bass, smallmouth bass, largemouth bass, black bass; and

(2) other nonnative predator fish species.

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- 1 (c) Requirements.—The program under this section shall—  
2 (1) be scientifically based, with research questions determined  
3 jointly by—  
4 (A) National Marine Fisheries Service scientists; and  
5 (B) technical experts of the districts;  
6 (2) include methods to quantify by, among other things, evaluating  
7 the number of juvenile anadromous fish that migrate past the rotary  
8 screw trap located at Caswell—  
9 (A) the number and size of predator fish removed each year;  
10 and  
11 (B) the impact of the removal on—  
12 (i) the overall abundance of predator fish in the  
13 Stanislaus River; and  
14 (ii) the populations of juvenile anadromous fish in the  
15 Stanislaus River;  
16 (3) among other methods, consider using wire fyke trapping,  
17 portable resistance board weirs, and boat electrofishing; and  
18 (4) be implemented as quickly as practicable after the date of  
19 issuance of all necessary scientific research permits.  
20 (d) Management.—The management of the program shall be the joint  
21 responsibility of the Assistant Administrator and the districts, which  
22 shall—  
23 (1) work collaboratively to ensure the performance of the program;  
24 and  
25 (2) discuss and agree on, among other things—  
26 (A) qualified scientists to lead the program;  
27 (B) research questions;  
28 (C) experimental design;  
29 (D) changes in the structure, management, personnel,  
30 techniques, strategy, data collection and access, reporting, and  
31 conduct of the program; and  
32 (E) the need for independent peer review.  
33 (e) Conduct.—  
34 (1) IN GENERAL.—For each applicable calendar year, the districts,  
35 on agreement of the Assistant Administrator, may elect to conduct  
36 the program under this section using—  
37 (A) the personnel of the Assistant Administrator or districts;

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- 1 (B) qualified private contractors hired by the districts;
- 2 (C) personnel of, on loan to, or otherwise assigned to the
- 3 National Marine Fisheries Service; or
- 4 (D) a combination of the individuals described in
- 5 subparagraphs (A) through (C).
- 6 (2) PARTICIPATION BY NATIONAL MARINE FISHERIES SERVICE.—
- 7 (A) IN GENERAL.—If the districts elect to conduct the program
- 8 using district personnel or qualified private contractors hired
- 9 under subparagraph (A) or (B) of paragraph (1), the Assistant
- 10 Administrator may assign an employee of, on loan to, or
- 11 otherwise assigned to the National Marine Fisheries Service, to
- 12 be present for all activities performed in the field to ensure
- 13 compliance with subsection (d).
- 14 (B) COSTS.—The districts shall pay the cost of participation
- 15 by the employee under subparagraph (A), in accordance with
- 16 subsection (f).
- 17 (3) TIMING OF ELECTION.—The districts shall notify the Assistant
- 18 Administrator of an election under paragraph (1) by not later than
- 19 October 15 of the calendar year preceding the calendar year for
- 20 which the election applies.
- 21 (f) Funding.—
- 22 (1) IN GENERAL.—The districts shall be responsible for 100 percent
- 23 of the cost of the program.
- 24 (2) CONTRIBUTED FUNDS.—The Secretary of Commerce may
- 25 accept and use contributions of funds from the districts to carry out
- 26 activities under the program.
- 27 (3) ESTIMATION OF COST.—
- 28 (A) IN GENERAL.—Not later than December 1 of each year of
- 29 the program, the Secretary of Commerce shall submit to the
- 30 districts an estimate of the cost to be incurred by the National
- 31 Marine Fisheries Service for the program during the following
- 32 calendar year, if any, including the cost of any data collection
- 33 and posting under subsection (g).
- 34 (B) FAILURE TO FUND.—If an amount equal to the estimate of
- 35 the Secretary of Commerce is not provided through
- 36 contributions pursuant to paragraph (2) before December 31 of
- 37 that calendar year—
- 38 (i) the Secretary shall have no obligation to conduct the
- 39 program activities otherwise scheduled for the following
- 40 calendar year until the amount is contributed by the

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1 districts; and

2 (ii) the districts may not conduct any aspect of the  
3 program until the amount is contributed by the districts.

4 (4) ACCOUNTING.—

5 (A) IN GENERAL.—Not later than September 1 of each year,  
6 the Secretary of Commerce shall provide to the districts an  
7 accounting of the costs incurred by the Secretary for the  
8 program during the preceding calendar year.

9 (B) EXCESS AMOUNTS.—If the amount contributed by the  
10 districts pursuant to paragraph (2) for a calendar year was  
11 greater than the costs incurred by the Secretary of Commerce  
12 during that year, the Secretary shall—

13 (i) apply the excess amounts to the cost of activities to be  
14 performed by the Secretary under the program, if any,  
15 during the following calendar year; or

16 (ii) if no such activities are to be performed, repay the  
17 excess amounts to the districts.

18 (g) Publication and Evaluation of Data.—

19 (1) IN GENERAL.—All data generated through the program,  
20 including by any private consultants, shall be routinely provided to  
21 the Assistant Administrator.

22 (2) INTERNET.—Not later than the 15th day of each month of the  
23 program, the Assistant Administrator shall publish on the Internet  
24 website of the National Marine Fisheries Service a tabular summary  
25 of the raw data collected under the program during the preceding  
26 month.

27 (3) REPORT.—On completion of the program, the Assistant  
28 Administrator shall prepare a final report evaluating the effectiveness  
29 of the program, including recommendations for future research and  
30 removal work.

31 (h) Consistency With Law.—

32 (1) IN GENERAL.—The programs in this section and section 204 are  
33 found to be consistent with the requirements of the Central Valley  
34 Project Improvement Act (Public Law 102–575; 106 Stat. 4706).

35 (2) LIMITATION.—No provision, plan, or definition under that Act,  
36 including section 3406(b)(1) of that Act (Public Law 102–575; 106  
37 Stat. 4714), shall be used—

38 (A) to prohibit the implementation of the programs in this  
39 section and section 204; or

40 (B) to prevent the accomplishment of the goals of the

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1 programs.

2 (3) STATE LAW.—The Secretary of the Interior, the Secretary of  
3 Commerce, and the participating districts shall comply with  
4 applicable requirements of State law with respect to the program  
5 under this subsection.

### 6 SEC. 204. PILOT PROJECTS TO IMPLEMENT 7 CALFED INVASIVE SPECIES PROGRAM.

8 (a) In General.—Not later than January 1, 2017, the Secretary of the  
9 Interior, in collaboration with the Secretary of Commerce, the Director of  
10 the California Department of Fish and Wildlife, and other relevant  
11 agencies and interested parties, shall establish and carry out pilot projects  
12 to implement the invasive species control program under section  
13 103(d)(6)(A)(iv) of Public Law 108–361 (118 Stat. 1690).

14 (b) Requirements.—The pilot projects under this section shall—

15 (1) seek to reduce invasive aquatic vegetation (such as water  
16 hyacinth), predators, and other competitors that contribute to the  
17 decline of native listed pelagic and anadromous species that occupy  
18 the Sacramento and San Joaquin Rivers and their tributaries and the  
19 Delta; and

20 (2) remove, reduce, or control the effects of species including  
21 Asiatic clams, silversides, gobies, Brazilian water weed, largemouth  
22 bass, smallmouth bass, striped bass, crappie, bluegill, white and  
23 channel catfish, zebra and quagga mussels, and brown bullheads.

24 (c) Emergency Environmental Reviews.—To expedite environmentally  
25 beneficial programs in this title for the conservation of threatened and  
26 endangered species, the Secretaries of the Interior and Commerce shall  
27 consult with the Council on Environmental Quality in accordance with  
28 section 1506.11 of title 40, Code of Federal Regulations (or successor  
29 regulations), to develop alternative arrangements to comply with the  
30 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for  
31 those programs.

### 32 TITLE III—CALIFORNIA EMERGENCY 33 DROUGHT RELIEF AND OPERATIONAL 34 FLEXIBILITY

### 35 SEC. 301. TAKING INTO ACCOUNT 36 INCREASED REAL-TIME MONITORING 37 AND UPDATED SCIENCE.

38 (a) Smelt Biological Opinion.—The Director shall use the best scientific



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1 and commercial data available to implement, continuously evaluate, and  
2 refine or amend, as appropriate, the reasonable and prudent alternative  
3 described in the smelt biological opinion.

4 (b) Increased Monitoring to Inform Real-time Operations.—

5 (1) IN GENERAL.—The Secretary of the Interior shall conduct  
6 additional surveys, on an annual basis at the appropriate time of year  
7 based on environmental conditions, in collaboration with interested  
8 stakeholders regarding the science of the Delta in general, and to  
9 enhance real time decisionmaking in particular, working in close  
10 coordination with relevant State authorities.

11 (2) REQUIREMENTS.—In carrying out this subsection, the Secretary  
12 of the Interior shall use—

13 (A) the most appropriate and accurate survey methods  
14 available for the detection of Delta smelt to determine the extent  
15 to which adult Delta smelt are distributed in relation to certain  
16 levels of turbidity or other environmental factors that may  
17 influence salvage rate; and

18 (B) results from appropriate surveys for the detection of Delta  
19 smelt to determine how the Central Valley Project and State  
20 Water Project may be operated more efficiently to maximize  
21 fish and water supply benefits.

22 (3) WINTER MONITORING.—During the period between December  
23 1 and March 31, if suspended sediment loads enter the Delta from the  
24 Sacramento River, and the suspended sediment loads appear likely to  
25 raise turbidity levels in the Old River north of the export pumps from  
26 values below 12 Nephelometric Turbidity Units (NTUs) to values  
27 above 12 NTUs, the Secretary of the Interior shall—

28 (A) conduct daily monitoring using appropriate survey  
29 methods at locations including the vicinity of Station 902 to  
30 determine the extent to which adult Delta smelt are moving with  
31 turbidity toward the export pumps; and

32 (B) use results from the monitoring under subparagraph (A) to  
33 determine how increased trawling can inform daily real-time  
34 Central Valley Project and State Water Project operations to  
35 maximize fish and water supply benefits.

36 (c) Periodic Review of Monitoring.—Not later than 1 year after the date  
37 of enactment of this Act, the Secretary of the Interior shall—

38 (1) evaluate whether the monitoring program under subsection (b),  
39 combined with other monitoring programs for the Delta, is providing  
40 sufficient data to inform Central Valley Project and State Water  
41 Project operations to maximize the water supply for fish and water  
42 supply benefits; and



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1 (2) determine whether the monitoring efforts should be changed in  
2 the short or long term to provide more useful data.

3 (d) Delta Smelt Distribution Study.—

4 (1) IN GENERAL.—Not later than March 15, 2019, the Secretary of  
5 the Interior shall—

6 (A) complete studies, to be initiated by not later than 90 days  
7 after the date of enactment of this Act, designed—

8 (i) to understand the location and distribution of Delta  
9 smelt throughout the range of the Delta smelt; and

10 (ii) to determine potential methods to minimize the  
11 effects of Central Valley Project and State Water Project  
12 operations on the Delta smelt;

13 (B) based on the best available science, if appropriate and  
14 practicable, implement new targeted sampling and monitoring of  
15 Delta smelt in order to maximize fish and water supply benefits  
16 prior to completion of the study under subparagraph (A);

17 (C) to the maximum extent practicable, use new technologies  
18 to allow for better tracking of Delta smelt, such as acoustic  
19 tagging, optical recognition during trawls, and fish detection  
20 using residual deoxyribonucleic acid (DNA); and

21 (D) if new sampling and monitoring is not implemented under  
22 subparagraph (B), provide a detailed explanation of the  
23 determination of the Secretary of the Interior that no change is  
24 warranted.

25 (2) CONSULTATION.—In determining the scope of the studies under  
26 this subsection, the Secretary of the Interior shall consult with—

27 (A) Central Valley Project and State Water Project water  
28 contractors and public water agencies;

29 (B) other public water agencies;

30 (C) the California Department of Fish and Wildlife and the  
31 California Department of Water Resources; and

32 (D) nongovernmental organizations.

33 (e) Scientifically Supported Implementation of OMR Flow  
34 Requirements.—

35 (1) ENVIRONMENTAL PROTECTION MANDATE.—The Secretaries of  
36 the Interior and Commerce shall take no action pursuant to this Act  
37 that would cause additional adverse effects on the listed fish species  
38 beyond the range of effects anticipated to occur to the listed fish  
39 species for the duration of the applicable biological opinion, using the  
40 best scientific and commercial data available.

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(2) REAL-TIME MANAGEMENT TO ACHIEVE MULTIPLE GOALS.—  
Building upon previous drought operations in calendar years 2014  
and 2015, the Secretaries of the Interior and Commerce shall monitor  
in real time to determine the location and densities of listed fish  
species relative to the pumps, Delta conditions, and other relevant  
factors, in order to identify more accurately and precisely—

(A) opportunities to increase water pumping without violating  
the standard in paragraph (1) or other applicable environmental  
laws and regulations; and

(B) circumstances where it is necessary to decrease water  
pumping to protect listed fish species.

(3) MANAGEMENT.—In implementing the smelt biological opinion  
and the salmonid biological opinion, the Secretaries of the Interior  
and Commerce shall manage the OMR in accordance with those  
opinions to maximize water supplies for the Central Valley Project  
and State Water Project, to the extent consistent with paragraph (1).

(4) REVERSE FLOW.—

(A) IN GENERAL.—With respect to the management of reverse  
flow in the OMR under the smelt biological opinion, the  
Secretary of the Interior shall implement the relevant provisions  
of the smelt biological opinion to maximize Central Valley  
Project and State Water Project water supplies, to the extent  
consistent with paragraph (1).

(B) REQUIREMENTS.—If the Secretary determines to manage  
rates of pumping at the C.W. “Bill” Jones and the Harvey O.  
Banks pumping plants in the southern Delta to achieve a reverse  
OMR flow rate less negative than -5,000 cubic feet per second,  
the Secretary shall—

(i) document in writing any significant facts regarding  
real-time conditions relevant to the determinations of OMR  
reverse flow rates, including—

(I) targeted real-time fish monitoring in the Old  
River pursuant to this section, including monitoring in  
the vicinity of Station 902; and

(II) near-term forecasts with available salvage  
models under prevailing conditions of the effects on  
Delta smelt of OMR flow of -5,000 cubic feet per  
second; and

(ii) explain in writing why any decision to manage OMR  
reverse flow at rates less negative than -5,000 cubic feet per  
second is necessary to comply with the environmental  
standard in subparagraph (e)(1), after considering relevant

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1 factors such as—

2 (I) the distribution of Delta smelt throughout the  
3 Delta;

4 (II) the potential effects of high entrainment risk on  
5 subsequent Delta smelt abundance;

6 (III) the water temperature;

7 (IV) other significant factors relevant to the  
8 determination, as required by applicable Federal or  
9 State laws;

10 (V) turbidity; and

11 (VI) whether any alternative measures could have a  
12 substantially lesser water supply impact.

13 (5) IMMEDIATE ACTION.—Nothing in this section shall prevent the  
14 Secretaries of the Interior or Commerce from taking immediate  
15 action to reduce pumping if necessary to do so to comply with the  
16 Endangered Species Act, its implementing regulations, or to avoid  
17 additional adverse effects on the listed fish species beyond the range  
18 of effects anticipated to occur to the listed fish species for the  
19 duration of the applicable biological opinion.

20 (f) First Sediment Flush.—During the first flush of sediment out of the  
21 Delta in each water year, based on objective evidence and notwithstanding  
22 subsection (e), the Secretary of the Interior may manage OMR flow,  
23 pursuant to the portion of the smelt biological opinion that protects adult  
24 Delta smelt from the first flush (Action 1 of the Reasonable and Prudent  
25 Alternative Component 1), at rates less negative than -5,000 cubic feet per  
26 second for the shortest time period necessary to avoid movement of adult  
27 Delta smelt to areas in the southern Delta that would be likely to increase  
28 entrainment at any Central Valley Project or State Water Project pumping  
29 plant.

30 (g) Construction.—The Secretaries of the Interior and Commerce  
31 may—

32 (1) implement subsection (e) building on, and taking into account  
33 the effects of, previous operations in the 2014 and 2015 water years;  
34 and

35 (2) use the results of monitoring through early warning surveys to  
36 make real-time operational decisions under the applicable biological  
37 opinion.

38 (h) Calculation of Reverse Flow in OMR.—Not later than 180 days  
39 after the date of enactment of this Act, the Secretary, in consultation with  
40 the California Department of Water Resources, consistent with the smelt  
41 biological opinion and the salmonid biological opinion, shall—

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(1) review, including seeking public comment regarding, whether any revision to the method used to calculate reverse flow in the OMR for implementation of the reasonable and prudent alternatives in the smelt biological opinion and the salmonid biological opinion for the purpose of using the best available science and monitoring to maximize fish and water supply benefits is warranted; and

(2) implement the revised method to calculate reverse flow in the OMR pursuant to paragraph (1).

(i) Successor Biological Opinions.—The Secretaries of the Interior and Commerce shall apply the provisions of this Act to successor biological opinions to the salmonid biological opinion and the smelt biological opinion, to the extent that the Secretaries of the Interior and Commerce determine to be consistent with—

(1) section 701(a)(3); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the regulations implementing that Act.

## SEC. 302. EMERGENCY OPERATIONS.

(a) Water Supplies.—

(1) IN GENERAL.—The Secretaries of the Interior and Commerce shall provide the maximum quantity of water supplies practicable to Central Valley Project agricultural, municipal, and industrial contractors, water service or repayment contractors, water rights settlement contractors, exchange contractors, refuge contractors, and State Water Project contractors, by approving, in accordance with applicable Federal and State laws (including regulations), operations or temporary projects to provide additional water supplies as quickly as practicable, based on available information, to address the emergency conditions.

(2) APPLICATION.—

(A) IN GENERAL.—Subject to subparagraph (B), paragraph (1) applies to any operation or temporary project involving the Klamath Project, if the project or operation would benefit Federal water contractors or otherwise alleviate drought conditions in the State of California.

(B) EFFECT.—Nothing in this subsection limits or affects the ability of the Secretaries of the Interior and Commerce to meet the legal obligations of the Secretary, including all tribal trust obligations.

(b) Administration.—In carrying out subsection (a), the Secretaries of the Interior and Commerce shall, in accordance with applicable laws (including regulations)—

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(1)(A) in close coordination with the California Department of Water Resources and the California Department of Fish and Wildlife, implement a pilot project to test and evaluate the ability to operate the Delta cross-channel gates daily or as otherwise may be appropriate to keep the gates open to the maximum extent practicable to protect out-migrating salmonids, manage salinities in the interior Delta and any other water quality issues, and maximize Central Valley Project and State Water Project pumping, subject to the condition that the pilot project shall be designed and implemented consistent with operational criteria and monitoring criteria required by the California State Water Resources Control Board, including its order, "Order Approving a Temporary Urgency Change in License and Permit Terms in Response to Drought Conditions", effective on January 31, 2014 (or a successor order); and

(B) design, implement, and evaluate those real-time monitoring capabilities to enable effective real-time operations of the cross-channel in order efficiently to meet the objectives described in subparagraph (A);

(2) with respect to the operation of the Delta cross-channel gates described in paragraph (1), collect data on the impact of that operation on—

(A) species listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) water quality; and

(C) water supply benefits;

(3) collaborate with the California Department of Water Resources to install a deflection barrier at Georgiana Slough and the Delta cross-channel gate to protect migrating salmonids, consistent with knowledge gained from related activities carried out during 2014 and 2015;

(4) not later than May 15, 2016, submit to the Committees on Energy and Natural Resources and Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives a notice and explanation regarding the extent to which the gates are able to remain open pursuant to paragraphs (1) through (3);

(5) implement turbidity control strategies that may allow for increased water deliveries while avoiding jeopardy to adult Delta smelt due consistent with the smelt biological opinion;

(6) adopt a 1:1 inflow-to-export ratio for the increment of increased flow, as measured as a 3-day running average at Vernalis during the period beginning on April 1 and ending on May 31, that

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1 results from the voluntary sale, transfer, or exchange, unless the  
2 Secretaries of the Interior and Commerce determine in writing that  
3 the ratio will cause additional adverse effects on any salmonid listed  
4 fish species beyond the range of effects anticipated to occur to the  
5 listed fish species for the duration of the salmonid biological opinion  
6 using the best scientific and commercial data available and subject to  
7 the condition that any individual sale, transfer, or exchange using that  
8 ratio may only proceed if—

9 (A) the Secretary of the Interior determines that the  
10 environmental effects of the proposed sale, transfer, or exchange  
11 are consistent with effects permitted under applicable law  
12 (including the Endangered Species Act (16 U.S.C. 1531 et seq.),  
13 the Federal Water Pollution Control Act (33 U.S.C. 1381 et  
14 seq.), and the Porter-Cologne Water Quality Control Act  
15 (California Water Code 13000 et seq.));

16 (B) Delta conditions are suitable to allow movement of the  
17 acquired, transferred, or exchanged water through the Delta, in  
18 accordance with existing Central Valley Project and State Water  
19 Project permitted water rights and the requirements of section  
20 3405(a)(1)(H) of the Central Valley Project Improvement Act  
21 (Public Law 102–575; 106 Stat. 4711); and

22 (C) the voluntary sale, transfer, or exchange of water results  
23 in flow that is in addition to flow that otherwise would occur in  
24 the absence of the voluntary sale, transfer, or exchange;

25 (7)(A) issue all necessary permit decisions under the authority of  
26 the Secretaries of the Interior and Commerce by not later than 60  
27 days after the date of receipt of a completed application by the State  
28 of California to place and use temporary barriers or operable gates in  
29 Delta channels to improve water quantity and quality for State Water  
30 Project and Central Valley Project south-of-Delta water contractors  
31 and other water users, which barriers or gates shall provide benefits  
32 for species protection and in-Delta water user water quality, subject  
33 to the condition that the barriers or gates shall be designed so that, if  
34 practicable, formal consultations under section 7 of the Endangered  
35 Species Act of 1973 (16 U.S.C. 1536) are not necessary; or

36 (B) take a longer period to issue the permit decisions described in  
37 subparagraph (A) only if the Secretaries of the Interior and  
38 Commerce determine in writing that an environmental impact  
39 statement is needed for the proposal to comply with the National  
40 Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

41 (8) allow and facilitate, consistent with existing priorities, water  
42 transfers through the C.W. “Bill” Jones Pumping Plant or the Harvey  
43 O. Banks Pumping Plant during the period beginning on April 1 and

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ending on November 30, subject to the condition that the transfers—

(A) are consistent with applicable Federal and State laws (including regulations), including the California Environmental Quality Act (California Public Resources Code 21000–21177); and

(B) are consistent with the smelt biological opinion and the salmonid biological opinion;

(9) require the Director and the Commissioner—

(A)(i) to determine whether a written transfer proposal is complete by not later than 30 days after the date of submission of the proposal; and

(ii) if the proposal is determined to be incomplete, to State with specificity what shall be supplemented or revised to complete the proposal; and

(B)(i) complete all requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) necessary to make final permit decisions on water transfer requests in the State of California by—

(I) not later than 30 days after the date of receipt of such a request; or

(II) such later date as the Director or the Commissioner determines to be necessary, only if the Director or the Commissioner determines in writing that an environmental impact statement is needed for the proposal to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) approve any water transfer request described in clause (i) to maximize the quantity of water supplies, subject to the condition that actions associated with the water transfer comply with applicable Federal and State laws (including regulations) and are consistent with—

(I) existing permitted water rights; and

(II) the requirements of section 3405(a)(1)(H) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4711);

(10) in coordination with the Secretary of Agriculture, enter into an agreement with the National Academy of Sciences to conduct a comprehensive study, to be completed not later than 1 year after the date of enactment of this Act, on the effectiveness and environmental impacts of saltcedar biological control efforts on increasing water



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supplies and improving riparian habitats of the Colorado River and its principal tributaries, in the State of California and elsewhere;

(11) pursuant to the research and adaptive management provisions of the smelt biological opinion and the salmonid biological opinion—

(A) use all available scientific tools to identify any changes to real-time operations of Bureau of Reclamation, State of California, or local water projects that could result in the availability of additional water supplies; and

(B) determine whether alternative operational or other management measures would meet applicable regulatory requirements for listed species while maximizing water supplies and water supply reliability; and

(12) continue to vary the averaging period of the maximum percent of Delta Inflow Diverted (Delta export-inflow ratio), to the extent consistent with any applicable California Water Resources Control Board orders under decision D-1641 (which sets water quality objectives for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary) to operate—

(A) to a ratio using a 3-day averaging period on the rising limb of a Delta inflow hydrograph; and

(B) to a 14-day averaging period on the falling limb of the Delta inflow hydrograph.

(c) Other Agencies.—To the extent that a Federal department or agency other than the Department of the Interior or the Department of Commerce has a role in approving a project described in subsection (a) or (b), this section shall apply to the Federal department or agency.

(d) Accelerated Project Decision and Elevation.—

(1) IN GENERAL.—On request of the Governor of California, the Secretaries of the Interior and Commerce shall use the expedited procedures under this subsection to make final decisions relating to Federal or federally approved projects or operational changes proposed pursuant to subsections (a) and (b) to provide additional water supplies or otherwise address emergency drought conditions.

(2) REQUEST FOR RESOLUTION.—

(A) IN GENERAL.—On request of the Governor of California, the Secretaries of the Interior and Commerce or the head of another Federal department or agency responsible for carrying out a review of a project, as applicable, shall convene a final project decision meeting with the heads of all relevant Federal agencies to decide whether to approve a project to provide emergency water supplies or otherwise address emergency



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1 drought conditions.

2 (B) MEETING.—A meeting under subparagraph (A) shall  
3 convene not later than 7 days after the date of receipt of the  
4 meeting request.

5 (3) NOTIFICATION.—On receipt of a request for a meeting under  
6 this subsection, the Secretary of the Interior shall notify the heads of  
7 all relevant Federal departments and agencies of the request,  
8 including a description of—

9 (A) the project to be reviewed; and

10 (B) the date for the meeting.

11 (4) DECISION.—Not later than 10 days after the date on which a  
12 meeting is requested under paragraph (2), the head of the relevant  
13 Federal agency shall issue a final decision on the project.

14 (5) MEETING CONVENED BY SECRETARY.—The Secretary of the  
15 Interior may convene a final project decision meeting under this  
16 subsection at any time, at the discretion of the Secretary, regardless  
17 of whether a meeting is requested under paragraph (2).

18 (6) LIMITATION.—The expedited procedures under this subsection  
19 apply only—

20 (A) to proposed new Federal projects or operational changes  
21 pursuant to subsection (a) or (b); and

22 (B) to the extent the procedures are consistent with applicable  
23 laws (including regulations).

24 (e) Drought Plan.—For any year during which this section is in effect,  
25 the Secretaries of the Interior and Commerce, in consultation with  
26 appropriate State officials, shall develop a drought operations plan that is  
27 consistent with this Act and other applicable Federal and State laws,  
28 including provisions intended to provide additional water supplies that  
29 could be of assistance during the drought in existence on the date of  
30 enactment of this Act.

### 31 SEC. 303. TEMPORARY OPERATIONAL 32 FLEXIBILITY TO CAPTURE PEAK FLOWS 33 FROM WINTER STORMS.

34 (a) Environmental Protection Mandate.—The Secretaries of the Interior  
35 and Commerce shall take no action pursuant to this Act that would cause  
36 additional adverse effects on the listed fish species beyond the range of  
37 effects anticipated to occur to the listed fish species for the duration of the  
38 applicable biological opinion, using the best scientific and commercial  
39 data available.

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(b) Real-time Management to Achieve Multiple Goals.—Pursuant to the adaptive management provisions of the smelt biological opinion and the salmonid biological opinion, the Secretaries of the Interior and Commerce shall monitor in real time to determine the location and densities of listed fish species relative to the pumps and Delta conditions, in order to identify more accurately and precisely—

(1) opportunities to increase water pumping without violating the standard in subsection (a) or other environmental laws and regulations; and

(2) circumstances where it is necessary to decrease water pumping to protect listed fish species.

(c) Requirement.—When consistent with the environmental protection mandate in subsection (a) and other environmental protections under subsection (e), the Secretaries of the Interior and Commerce, through the drought contingency plans, shall evaluate and may authorize the Central Valley Project and the State Water Project, combined, to operate at levels that result in daily average OMR flows more negative than -5,000 cubic feet per second (based on United States Geological Survey gauges on OMR) to capture peak flows during storm-related events, in accordance with subsections (d), (e), and (f).

(d) Factors to Be Considered.—In determining additional adverse effects on any listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the smelt biological opinion or salmonid biological opinion, using the best scientific and commercial data available, the Secretaries of the Interior and Commerce may consider the following factors:

(1) The real-time distribution of listed species.

(2) Relevant physical parameters including projected inflows, turbidity, salinities, and tidal cycles.

(3) Any other factor under the relevant biological opinion.

(e) Other Environmental Protections.—

(1) STATE LAW.—The actions of the Secretaries of the Interior and Commerce pursuant to this section shall be consistent with applicable regulatory requirements under State law.

(2) FIRST SEDIMENT FLUSH.—During the first flush of sediment out of the Delta during each water year, subject to the condition that the determination is based on objective evidence, OMR flow may be pursuant to the salmonid biological opinion and Action 1 of Reasonable and Prudent Alternative Component 1 in the smelt biological opinion at rates less negative than -5,000 cubic feet per second for the shortest time period necessary to avoid movement of adult Delta smelt to areas in the southern Delta that would be likely

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to increase entrainment at Central Valley Project or State Water  
Project pumping plants.

(3) APPLICABILITY.—

(A) IN GENERAL.—This section on capturing peak flows from  
winter storms shall not affect the application of the salmonid  
biological opinion during the period beginning on April 1 and  
ending on May 31, unless the Secretary of Commerce  
determines that this section can be applied during part or all of  
that time period to provide emergency water supply relief  
without resulting in additional adverse effects beyond those  
anticipated to occur for the duration the salmonid biological  
opinion.

(B) THROUGH-DELTA WATER TRANSFERS.—In addition to any  
other actions to benefit water supply, the Secretaries of the  
Interior and Commerce shall consider allowing through-Delta  
water transfers to occur during the period referred to in  
subparagraph (A), in accordance with section 302(b)(8).

(C) CVPIA.—A water transfer solely or exclusively through  
the State Water Project shall not be required to be consistent  
with section 3405(a)(1)(H) of the Central Valley Project  
Improvement Act (Public Law 102–575; 106 Stat. 4711).

(4) MONITORING.—In implementing this section, the  
Commissioner, in coordination with the Director, the Assistant  
Administrator, and the California Department of Fish and Wildlife,  
shall carry out a monitoring program and other data gathering  
activities—

(A) to ensure incidental take levels are not exceeded; and

(B) to identify potential negative impacts, if any.

(f) Effect of High Outflows.—When exercising their authorities  
pursuant to drought contingency plans to capture peak flows pursuant to  
subsection (c), the Secretaries of the Interior and Commerce shall not  
count any day during that period toward the 5-day or 14-day running  
averages of tidally filtered daily OMR flow requirements under the smelt  
biological opinion or the salmonid biological opinion unless doing so is  
required to avoid additional adverse effects on listed fish species beyond  
the range of effects anticipated to occur to the listed fish species for the  
duration of the biological opinions, using the best scientific and  
commercial data available.

## SEC. 304. EMERGENCY ENVIRONMENTAL REVIEWS.

To minimize the time spent carrying out environmental reviews and

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quickly to deliver water that is needed to address emergency drought conditions in the State of California, the head of each applicable Federal department or agency shall, in carrying out this title, consult with the Council on Environmental Quality in accordance with section 1506.11 of title 40, Code of Federal Regulations (or successor regulations), to develop alternative arrangements to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) during the emergency.

### SEC. 305. LEVEL OF DETAIL REQUIRED FOR ANALYSIS.

In articulating the determinations and demonstrations required under this title, the Secretaries of the Interior and Commerce shall—

(1) fully satisfy the requirements of this title using such quantity of written supporting detail as is reasonable within the timeframe permitted for timely decisionmaking in response to changing conditions in the Delta; and

(2) make the decision document available on a publicly accessible Internet website.

## TITLE IV—WATER RIGHTS

### SEC. 401. OFFSET FOR STATE WATER PROJECT.

(a) Implementation Impacts.—The Secretary of the Interior shall confer with the California Department of Fish and Wildlife in connection with the implementation of this Act regarding potential impacts to any consistency determination for operations of the State Water Project issued pursuant to section 2080.1 of the California Fish and Game Code.

(b) Additional Yield.—If, as a result of the application of this Act, the California Department of Fish and Wildlife—

(1) determines that operations of the State Water Project are inconsistent with the consistency determinations issued pursuant to California Fish and Game Code section 2080.1 for operations of the State Water Project; or

(2) requires take authorization under California Fish and Game Code section 2081 for operation of the State Water Project,

in a manner that directly or indirectly results in reduced water supply to the State Water Project as compared with the water supply available under the smelt biological opinion and the salmonid biological opinion, and as a result, Central Valley Project yield is greater than it otherwise would have been, then that additional yield shall be made available to the State Water Project for delivery to State Water Project contractors to offset the reduced

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water supply, provided that if it is necessary to reduce water supplies for any Central Valley Project authorized uses or contractors to make available to the State Water Project that additional yield, such reductions shall be applied to those uses or contractors that benefit from that increased yield.

(c) Notification Related to Environmental Protections.—The Secretaries of the Interior and Commerce shall—

(1) notify the Director of the California Department of Fish and Wildlife regarding any changes in the manner in which the smelt biological opinion or the salmonid biological opinion is implemented; and

(2) confirm that those changes are consistent with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(d) Savings.—Nothing in this section shall have any effect on the application of the California Endangered Species Act (California Fish and Game Code sections 2050 through 2116).

## SEC. 402. AREA OF ORIGIN AND WATER RIGHTS PROTECTIONS.

(a) In General.—In carrying out this Act, the Secretaries of the Interior and Commerce shall not take any action that—

(1) diminishes, impairs, or otherwise affects in any manner any area of origin, watershed of origin, county of origin, or any other water rights protection, including rights to water appropriated before December 19, 1914, provided under California law;

(2) limits, expands, or otherwise affects the application of section 10505, 10505.5, 11128, 11460, 11461, 11462, 11463, or 12200 through 12220 of the California Water Code or any other provision of California water rights law, without respect to whether such a provision is specifically referred to in this Act; or

(3) diminishes, impairs, or otherwise affects in any manner any water rights or water rights priorities under applicable law.

(b) Effect of Act.—Nothing in this Act—

(1) affects or modifies any obligation of the Secretary of the Interior under section 8 of the Act of June 17, 1902 (32 Stat. 390, chapter 1093); or

(2) diminishes, impairs, or otherwise affects in any manner any project purposes or priorities for the allocation, delivery, or use of water under applicable law, including the project purposes and priorities established under sections 3402 and section 3406 of the Central Valley Project Improvement Act (Public Law 102–575; 106

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1 Stat. 4706).

### 2 SEC. 403. NO REDIRECTED ADVERSE 3 IMPACTS.

4 (a) Applicability.—

5 (1) IN GENERAL.—The Secretaries of the Interior and Commerce  
6 shall not carry out any specific action pursuant to this Act that will  
7 directly or, through State agency action, indirectly result in the  
8 involuntary reduction of water supply to an individual, district, or  
9 agency that has in effect a contract for water with the State Water  
10 Project or the Central Valley Project, including settlement and  
11 exchange contracts, refuge contracts, and Friant Division contracts,  
12 as compared to the water supply that would be provided in the  
13 absence of action under this Act.

14 (2) EFFECT OF ACT.—Nothing in this Act modifies, amends, or  
15 affects any right or obligation of any party to a contract described in  
16 paragraph (1).

17 (b) Action on Determination.—If, after exploring all options, the  
18 Secretary makes a final determination that a proposed action under this  
19 Act cannot be carried out in accordance with subsection (a), the  
20 Secretary—

21 (1) shall document that determination in writing with regard to that  
22 action, including a statement of the facts relied on, and an  
23 explanation of the basis, for the decision; and

24 (2) is subject to applicable law, including the Endangered Species  
25 Act of 1973 (16 U.S.C. 1531 et seq.).

### 26 SEC. 404. ALLOCATIONS FOR 27 SACRAMENTO VALLEY WATER SERVICE 28 CONTRACTORS.

29 (a) Definitions.—In this section:

30 (1) EXISTING CENTRAL VALLEY PROJECT AGRICULTURAL WATER  
31 SERVICE CONTRACTOR WITHIN SACRAMENTO RIVER WATERSHED.—  
32 The term “existing Central Valley Project agricultural water service  
33 contractor within the Sacramento River Watershed” means any water  
34 service contractor within the Shasta, Trinity, or Sacramento River  
35 Division of the Central Valley Project that has in effect a water  
36 service contract on the date of enactment of this Act that provides  
37 water for irrigation.

38 (2) YEAR TERMS.—The terms “Above Normal”, “Below Normal”,  
39 “Dry”, and “Wet”, with respect to a year, have the meanings given

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1 those terms in the Sacramento Valley Water Year Type (40–30–30)  
2 Index.

3 (b) Allocations of Water.—

4 (1) ALLOCATIONS.—Subject to subsection (c), the Secretary of the  
5 Interior shall make every reasonable effort in the operation of the  
6 Central Valley Project to allocate water provided for irrigation  
7 purposes to each existing Central Valley Project agricultural water  
8 service contractor within the Sacramento River Watershed in  
9 accordance with the following:

10 (A) Not less than 100 percent of the contract quantity shall be  
11 allocated to the Central Valley Project agricultural water service  
12 contractor within the Sacramento River Watershed in a Wet  
13 year.

14 (B) Not less than 100 percent of the contract quantity shall be  
15 allocated to the Central Valley Project agricultural water service  
16 contractor within the Sacramento River Watershed in an Above  
17 Normal year.

18 (C) Not less than 100 percent of the contract quantity shall be  
19 allocated to the Central Valley Project agricultural water service  
20 contractor within the Sacramento River Watershed in a Below  
21 Normal year that is preceded by an Above Normal or Wet year.

22 (D) Not less than 50 percent of the contract quantity shall be  
23 allocated to the existing Central Valley Project agricultural  
24 water service contractor within the Sacramento River Watershed  
25 in a Dry year that is preceded by a Below Normal, Above  
26 Normal, or Wet year.

27 (E) Subject to paragraph (2), in any other year not identified  
28 in any of subparagraphs (A) through (D), the Secretary shall  
29 allocate not less than twice the allocation percentage to south-of-  
30 Delta Central Valley Project agricultural water service  
31 contractors, up to 100 percent.

32 (2) EFFECT OF SUBPARAGRAPH.—In the event of anomalous  
33 circumstances, nothing in paragraph (1)(E) precludes an allocation to  
34 an existing Central Valley Project agricultural water service  
35 contractor within the Sacramento River Watershed that is greater than  
36 twice the allocation percentage to a south-of-Delta Central Valley  
37 Project agricultural water service contractor.

38 (c) Protection of Environment, Municipal, and Industrial Supplies and  
39 Other Contractors.—

40 (1) ENVIRONMENT.—Nothing in subsection (b) shall adversely  
41 affect any protections for the environment, including—



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(A) the cold water pool behind Shasta Dam or any other Central Valley Project reservoir;

(B) the obligation of the Secretary of the Interior to make water available to managed wetlands pursuant to section 3406(d) of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4722); or

(C) any obligation—

(i) of the Secretaries of the Interior and Commerce under the smelt biological opinion, the salmonid biological opinion, or any other applicable biological opinion; or

(ii) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706), or any other applicable law (including regulations).

(2) MUNICIPAL AND INDUSTRIAL SUPPLIES.—Nothing in subsection (b)—

(A) modifies any provision of a water service contract that addresses municipal or industrial water shortage policies of the Secretaries of the Interior and Commerce;

(B) affects or limits the authority of the Secretaries of the Interior and Commerce—

(i) to adopt or modify municipal and industrial water shortage policies; or

(ii) to implement a municipal or industrial water shortage policy;

(C) constrains, governs, or affects, directly or indirectly, the operations of the American River Division of the Central Valley Project or any deliveries from that Division or a unit or facility of that Division; or

(D) affects any allocation to a Central Valley Project municipal or industrial water service contractor by increasing or decreasing allocations to the contractor, as compared to the allocation the contractor would have received absent subsection (b).

(3) OTHER CONTRACTORS.—Nothing in subsection (b)—

(A) affects the priority of any individual or entity with a Sacramento River settlement contract over water service or repayment contractors;

(B) affects the obligation of the United States to make a substitute supply of water available to the San Joaquin River



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exchange contractors;

(C) affects the allocation of water to Friant Division contractors of the Central Valley Project;

(D) results in the involuntary reduction in contract water allocations to individuals or entities with contracts to receive water from the Friant Division; or

(E) authorizes any actions inconsistent with State water rights law.

## TITLE V—MISCELLANEOUS PROVISIONS

### SEC. 501. AUTHORIZED SERVICE AREA.

(a) In General.—The service area of the Central Valley Project, as authorized by the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706), shall include the area within the boundaries of the Kettleman City Community Services District of California, as in existence on the date of enactment of this Act.

(b) Long-term Contract.—

(1) IN GENERAL.—Notwithstanding the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4706) and subject to paragraph (2), the Secretary of the Interior, in accordance with the reclamation laws, shall enter into a long-term contract with the Kettleman City Community Services District of California, under terms and conditions mutually agreeable to the parties, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use.

(2) LIMITATION.—A Central Valley Project water delivery under the contract entered into under paragraph (1) shall be limited to the minimal quantity necessary to meet the immediate needs of the Kettleman City Community Services District, in the event that local supplies or State Water Project allocations are insufficient to meet those needs.

(c) Permit.—The Secretary shall apply to the State of California for a permit for a joint place of use for water deliveries under the contract entered into under subsection (b) with respect to the expanded service area under subsection (a), in accordance with State law.

(d) Additional Costs.—The applicable non-Federal entity shall pay the costs of any additional infrastructure, water treatment, or related costs are needed to carry out this section.

### SEC. 502. OVERSIGHT OVER AND PUBLIC INPUT INTO RESTORATION FUND

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### ACTIVITIES.

Section 3407 of the Central Valley Project Improvement Act (Public Law 102–575; 106 Stat. 4726) is amended by striking subsection (f) and inserting the following:

“(f) Restoration Fund Financial Reports.—

“(1) TRANSPARENCY IN EXPENDITURES.—For the effective period of the California Emergency Drought Relief Act, the Secretary shall make available, on a publicly accessible Internet website, a report describing a detailed work plan for the expenditure of all amounts deposited in the Restoration Fund during the preceding fiscal year, including—

“(A) a description of all receipts to, and uses of, funds deposited in the Restoration Fund and the Restoration Account during the preceding fiscal year;

“(B) a projection of the expected receipts to the Restoration Fund and Restoration Account for the following fiscal year; and

“(C) an analysis of the effectiveness of each expenditure included in the report covering the preceding fiscal year.

“(2) PUBLIC PARTICIPATION FOR PLANNED EXPENDITURES.—

“(A) IN GENERAL.—For each fiscal year, the Secretary shall make available on a publicly accessible Internet website a proposed draft work plan for the following fiscal year regarding priorities and spending levels for projects and programs to be carried out under this title.

“(B) PUBLIC COMMENT.—The draft work plan under this paragraph shall be made available for public comment for a period not less than 30 days.”.

### SEC. 503. BASIN STUDIES.

(a) In General.—The Secretary of the Interior shall—

(1) expand opportunities and expedite completion of assessments under the Secure Water Act (section 9503(b) of Public Law 111–11 (42 U.S.C. 10363(b)), together with non-Federal partners, of individual sub-basins and watersheds within major Reclamation river basins; and

(2) ensure prompt decisionmaking regarding, and expedited implementation of, adaptation and mitigation strategies developed through the special study process.

(b) Contributed Funds.—The Secretary may accept and use contributions of funds from the non-Federal partners to carry out activities

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under the special studies consistent with the administration of basin studies program criteria.

### SEC. 504. TECHNICAL AND MODELING ASSISTANCE.

(a) In General.—The Secretaries of the Interior and Commerce may provide technical and modeling assistance on request to the State Water Resources Control Board during the drought emergency in effect on the date of enactment of this Act.

(b) Data Availability.—The Secretaries of the Interior and Commerce shall make publicly available on request any modeling and data provided under subsection (a).

### SEC. 505. REPORT ON RESULTS OF WATER USAGE.

The Secretary of the Interior, in consultation with the Secretary of Commerce and the Secretary of Natural Resources of the State of California, shall publish an annual report describing, with respect to the period covered by the report—

(1) instream flow releases from the Central Valley Project and State Water Project;

(2) the explicit purpose and authority of those releases; and

(3) all measured environmental benefits as a result of the releases.

### SEC. 506. ADDITIONAL STORAGE AT NEW MELONES.

(a) Coordination.—The Commissioner shall coordinate with local water and irrigation districts in the Stanislaus River Basin to identify the quantity of water storage made available by the draft plan of operations in New Melones Reservoir (referred to in this section as the “draft plan”) for—

(1) water conservation programs;

(2) conjunctive use projects;

(3) water transfers;

(4) rescheduled project water; and

(5) other projects to maximize water storage and ensure the beneficial use of the water resources in the Stanislaus River Basin.

(b) Requirement.—The programs and projects described in subsection (a) shall be implemented in accordance with applicable laws (including

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regulations).

(c) Source of Water.—The source of water for any storage program carried out under this section at New Melones Reservoir shall be made available under a valid water right, in accordance with—

(1) the water transfer guidelines of the State of California; and

(2) any other applicable State water law.

(d) Report.—Not later than 18 months after the date of identification of the quantity of storage made available under the draft plan that has been allocated under this section, the Commissioner shall submit to Congress a report describing the implementation of this section, including proposals received by the Commissioner from interested parties for purposes of this section.

### SEC. 507. CONTRACTING AUTHORITIES.

(a) Delta Research Station Leases.—Notwithstanding section 585 of title 40, United States Code, the Secretaries of the Interior and Commerce may enter directly into any lease of real property for the Delta Research Station.

(b) Collaborative Processes.—Notwithstanding the Federal Advisory Committee Act (5 U.S.C. App.) and applicable Federal acquisitions and contracting authorities, the Secretaries of the Interior and Commerce may use the collaborative processes under the Collaborative Science Adaptive Management Program to enter into contracts with specific individuals or organizations directly or in conjunction with appropriate State agencies.

### SEC. 508. SINGLE ANNUAL REPORT.

To the maximum extent practicable, the Secretary of the Interior shall combine into 1 report the annual reports required to be submitted under this Act to the Committees on Appropriations and Energy and Natural Resources of the Senate and the Committees on Appropriations and Natural Resources of the House of Representatives.

## TITLE VI—OFFSETS

### SEC. 601. DEAUTHORIZATION OF INACTIVE PROJECTS.

(a) Purposes; Definitions.—

(1) PURPOSES.—The purposes of this section are—

(A) to identify Bureau of Reclamation projects and programs that are no longer feasible due to—

(i) a lack of local support;

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1 (ii) a lack of available Federal or non-Federal resources;  
2 or

3 (iii) an authorized purpose that is no longer relevant or  
4 feasible;

5 (B) to establish an efficient and transparent process for  
6 deauthorizing Reclamation projects and programs that have  
7 failed to receive a minimum level of investment to ensure active  
8 projects can move forward while reducing the backlog of  
9 authorized projects;

10 (C) to create an expedited and definitive process to  
11 deauthorize Reclamation projects and programs;

12 (D) to allow the continued authorization of programs and  
13 projects that are feasible; and

14 (E) to establish a process for identifying authorized  
15 Reclamation projects and programs that are no longer—

16 (i) in the Federal interest; or

17 (ii) feasible.

18 (2) DEFINITIONS.—In this section:

19 (A) RECLAMATION PROJECT OR PROGRAM.—The term  
20 “Reclamation project or program” includes any project or  
21 program that is administered by the Bureau of Reclamation.

22 (B) SECRETARY.—The term “Secretary” means the Secretary  
23 of the Interior.

24 (b) Comprehensive Reports.—

25 (1) MINIMUM FUNDING LIST.—Not later than 180 days after the  
26 date of enactment of this Act, the Secretary shall submit to the  
27 Committee on Energy and Natural Resources of the Senate and the  
28 Committee on Natural Resources of the House of Representatives,  
29 and make available on a publicly accessible Internet website in a  
30 manner that is downloadable, searchable, and sortable, a list of—

31 (A) Reclamation programs authorized, and for which funding  
32 was obligated, during the current fiscal year or any of the  
33 preceding 5 fiscal years; and

34 (B)(i) Reclamation projects or separable elements of projects  
35 authorized for construction for which funding has been obligated  
36 during the current fiscal year or any of the 5 preceding fiscal  
37 years;

38 (ii) the amount of funding obligated for each such project or  
39 separable element per fiscal year;

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- 1 (iii) the current phase of each such project or separable  
2 element; and
- 3 (iv) the amount required to complete the current phase of each  
4 such project or separable element.
- 5 (2) BACKLOG REPORT.—Together with the report under paragraph  
6 (1), the Secretary shall submit to the Committee on Energy and  
7 Natural Resources of the Senate and the Committee on Natural  
8 Resources of the House of Representatives, and make available on a  
9 publicly accessible Internet website in a manner that is downloadable,  
10 searchable, and sortable, a list of—
- 11 (A) Reclamation programs that are authorized and for which  
12 funding was not obligated during the current fiscal year or any  
13 of the preceding 5 fiscal years; and
- 14 (B)(i) projects or separable elements that are authorized for  
15 construction but have not been completed;
- 16 (ii) the date of authorization of the project or separable  
17 element, including any subsequent modifications to the original  
18 authorization;
- 19 (iii) the original budget authority for the project or separable  
20 element;
- 21 (iv) a brief description of the project or separable element;
- 22 (v) the estimated date of completion of the project or  
23 separable element;
- 24 (vi) the estimated cost of completion of the project or  
25 separable element; and
- 26 (vii) any amounts appropriated for the project or separable  
27 element that remain unobligated.
- 28 (c) Interim Deauthorization List.—
- 29 (1) IN GENERAL.—The Secretary shall develop an interim  
30 deauthorization list that identifies each authorized Reclamation  
31 program or project, or separable element of a Reclamation program  
32 or project, for which Federal or non-Federal funds were not obligated  
33 for construction during—
- 34 (A) the applicable fiscal year; or
- 35 (B) any of the 5 preceding fiscal years.
- 36 (2) SPECIAL RULE FOR PROJECTS RECEIVING FUNDS FOR POST-  
37 AUTHORIZATION STUDY.—A Reclamation project or separable  
38 element of a Reclamation project may not be identified on the interim  
39 deauthorization list, or on the final deauthorization list under  
40 subsection (d), if the Reclamation project or separable element

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1 received funding for a post-authorization study during—

2 (A) the applicable fiscal year; or

3 (B) any of the 5 preceding fiscal years.

4 (3) PUBLIC COMMENT AND CONSULTATION.—

5 (A) IN GENERAL.—The Secretary shall solicit comments from  
6 the public and the Governors of each applicable State regarding  
7 the interim deauthorization list developed under paragraph (1).

8 (B) COMMENT PERIOD.—The public comment period under  
9 subparagraph (A) shall be 90 days.

10 (4) SUBMISSION TO CONGRESS; PUBLICATION.—Not later than 90  
11 days after the date of submission of the list required under subsection  
12 (b), the Secretary shall—

13 (A) submit the interim deauthorization list to the Committee  
14 on Energy and Natural Resources of the Senate and the  
15 Committee on Natural Resources of the House of  
16 Representatives; and

17 (B) publish the interim deauthorization list in the Federal  
18 Register.

19 (d) Final Deauthorization List.—

20 (1) IN GENERAL.—The Secretary shall develop a final  
21 deauthorization list of each Reclamation program or project, or  
22 separable element of a Reclamation program or project, described in  
23 subsection (c)(1) that is identified pursuant to this subsection.

24 (2) IDENTIFICATION OF PROJECTS.—

25 (A) SEQUENCING.—

26 (i) IN GENERAL.—The Secretary shall identify  
27 Reclamation projects and separable elements of  
28 Reclamation projects for inclusion on the final  
29 deauthorization list according to the order in which the  
30 Reclamation projects and separable elements were  
31 authorized, beginning with the earliest-authorized  
32 Reclamation projects and separable elements.

33 (ii) FACTORS FOR CONSIDERATION.—The Secretary may  
34 identify a Reclamation program, project, or separable  
35 element of a Reclamation program or project for exclusion  
36 from the final deauthorization list if the Secretary  
37 determines, on a case-by-case basis, that the Reclamation  
38 program, project, or separable element is critical for  
39 interests of the United States, based on the possible impact  
40 of the Reclamation program, project, or separable element



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1 on—

2 (I) public health and safety;

3 (II) the national economy; or

4 (III) the environment.

5 (iii) CONSIDERATION OF PUBLIC COMMENTS.—In making  
6 a determination under clause (i) or (ii), the Secretary shall  
7 take into consideration any comments received under  
8 subsection (c)(3).

9 (B) APPENDIX.—The Secretary shall include as part of the  
10 final deauthorization list an appendix that—

11 (i) identifies each Reclamation program, project, and  
12 separable element of a Reclamation program or project on  
13 the interim deauthorization list developed under subsection  
14 (c) that is not included on the final deauthorization list; and

15 (ii) describes the reasons why the Reclamation program,  
16 project, or separable element is not included.

17 (3) SUBMISSION TO CONGRESS; PUBLICATION.—Not later than 120  
18 days after the date of expiration of the public comment period under  
19 subsection (c)(3), the Secretary shall—

20 (A) submit the final deauthorization list and the appendix  
21 under paragraph (2)(B) to the Committee on Energy and Natural  
22 Resources of the Senate and the Committee on Natural  
23 Resources of the House of Representatives; and

24 (B) publish the final deauthorization list and the appendix in  
25 the Federal Register.

26 (e) Deauthorization; Congressional Review.—

27 (1) IN GENERAL.—Subject to paragraph (2), effective beginning on  
28 the date that is 180 days after the date of submission of the final  
29 deauthorization list under subsection (d), a Reclamation program,  
30 project, or separable element of a Reclamation program or project  
31 included on the list is deauthorized, unless Congress passes a joint  
32 resolution disapproving the final deauthorization report before that  
33 date.

34 (2) NON-FEDERAL CONTRIBUTIONS.—A Reclamation program,  
35 project, or separable element included on the final deauthorization list  
36 under subsection (d) shall not be deauthorized under this subsection  
37 if, before the expiration of the 180-day period referred to in  
38 paragraph (1), the non-Federal interest of the Reclamation program,  
39 project, or separable element provides sufficient funds to complete  
40 the Reclamation program, project, or separable element.



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(f) Treatment of Project Modifications.—For purposes of this section, if an authorized water resources development Reclamation program, project, or separable element of the program or project has been modified by an Act of Congress, the date of authorization of the Reclamation program, project, or separable element shall be deemed to be the date of the most recent modification.

(g) Exemption.—Any Reclamation project that would yield an average of more than 200,000 acre-feet of water per year shall be exempt from this subsection.

### SEC. 602. ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT.

(a) Short Title.—This section may be cited as the “Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act”.

(b) Definitions.—In this section:

(1) ACCOUNT.—The term “Account” means the Reclamation Surface Water Storage Account established under subsection (f)(1).

(2) CONSTRUCTION.—

(A) IN GENERAL.—The term “construction” means the designing, materials engineering and testing, surveying, and building of surface water storage.

(B) INCLUSIONS.—The term “construction” includes—

(i) any addition to existing surface water storage; and

(ii) construction of a new surface water storage facility.

(C) EXCLUSIONS.—The term “construction” excludes any Federal statutory or regulatory obligation relating to any permit, review, approval, or other similar requirement.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) SURFACE WATER STORAGE.—The term “surface water storage” means storage at—

(A) any federally owned facility under the jurisdiction of the Bureau of Reclamation; or

(B) any non-Federal facility used for the surface storage and supply of water resources.

(5) TREASURY RATE.—The term “Treasury rate” means the 20-year constant maturity treasury rate published by the United States Treasury, as in existence on the effective date of the applicable

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1 contract.

2 (6) WATER USERS ASSOCIATION.—

3 (A) IN GENERAL.—The term “water users association” means  
4 an entity organized and recognized under State law that is  
5 eligible to enter into contracts with the Commissioner—

6 (i) to receive contract water for delivery to users of the  
7 water; and

8 (ii) to pay any applicable charges.

9 (B) INCLUSIONS.—The term “water users association”  
10 includes—

11 (i) an association;

12 (ii) a conservatory district;

13 (iii) an irrigation district;

14 (iv) a municipality; and

15 (v) a water project contract unit.

16 (c) Conversion and Prepayment of Contracts.—

17 (1) CONVERSION.—

18 (A) IN GENERAL.—On receipt of a request from a water users  
19 association, the Secretary shall convert any water service  
20 contract in effect on the date of enactment of this Act between  
21 the United States and the water users association to allow for  
22 prepayment of the repayment contract in accordance with this  
23 paragraph under mutually agreeable terms and conditions.

24 (B) MANNER.—The manner of conversion under this  
25 paragraph shall be as follows:

26 (i) Water service contracts entered under section 9(c)(2)  
27 of the Act of August 4, 1939 (53 Stat. 1194, chapter 418),  
28 to be converted under this section shall be converted to a  
29 contract under section 9(c)(1) of that Act (53 Stat. 1194,  
30 chapter 418).

31 (ii) Water service contracts entered into under section  
32 9(e) of the Act of August 4, 1939 (53 Stat. 1196, chapter  
33 418), to be converted under this section shall be converted  
34 to repayment contracts under section 9(d) of that Act (53  
35 Stat. 1195, chapter 418).

36 (2) PREPAYMENT.—

37 (A) SECTION 9(C)(1).—Except for a repayment contract under  
38 which the applicable water users association has previously

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1 negotiated for prepayment, each repayment contract under  
2 section 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1194,  
3 chapter 418) (including any contract converted pursuant to  
4 paragraph (1)(B)(i)), in effect on the date of enactment of this  
5 Act shall, at the request of the water users association—

6 (i) provide for the repayment in lump sum of the  
7 remaining construction costs identified in an applicable  
8 water project-specific municipal or industrial rate  
9 repayment schedule (as adjusted to reflect payment not  
10 reflected in the schedule) and properly assignable for  
11 ultimate return by the water users association, subject to the  
12 condition that an estimate of the remaining construction  
13 costs, as adjusted, shall be provided by the Secretary to the  
14 water users association by not later than 90 days after the  
15 date of receipt of the request of the water users association;

16 (ii) require that any construction costs or other  
17 capitalized costs that were incurred after the effective date  
18 of the contract, were not reflected in the rate schedule  
19 referred to in clause (i), or were not properly assignable to  
20 the water users association, and were incurred as a result of  
21 a collective annual allocation of capital costs to the water  
22 users association electing contract conversion under this  
23 subsection, shall be repaid—

24 (I) for costs equal to less than \$5,000,000, by not  
25 later than the date that is 5 years after the date of  
26 notification of the allocation; or

27 (II) for costs equal to \$5,000,000 or more, in  
28 accordance with applicable reclamation laws; and

29 (iii) continue in effect for the period during which the  
30 water users association pays applicable charges in  
31 accordance with section 9(c)(1) of the Act of August 4,  
32 1939 (53 Stat. 1194, chapter 418), and other applicable law.

33 (B) SECTION 9(D).—Except for a repayment contract under  
34 which the applicable water users association has previously  
35 negotiated for prepayment, each repayment contract under  
36 section 9(d) of the Act of August 4, 1939 (53 Stat. 1195, chapter  
37 418) (including any contract converted pursuant to paragraph  
38 (1)(B)(ii)), in effect on the date of enactment of this Act shall, at  
39 the request of the water users association—

40 (i) provide for repayment of the remaining construction  
41 costs identified in an applicable water project-specific  
42 irrigation rate repayment schedule (as adjusted to reflect  
43 payment not reflected in the schedule) and properly

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assignable for ultimate return by the water users association in lump sum, by accelerated prepayment, or if made in approximately equal installments, by not later than 3 years after the effective date of the repayment contract, subject to the conditions that—

(I) the amount shall be discounted by  $\frac{1}{2}$  the Treasury rate; and

(II) the estimate of the remaining construction costs, as adjusted, shall be provided by the Secretary to the water users association by not later than 90 days after the date of receipt of the request of the water users association;

(ii) require that any construction costs or other capitalized costs that were incurred after the effective date of the contract, were not reflected in the rate schedule referred to in clause (i), or were not properly assignable to the water users association, and were incurred as a result of a collective annual allocation of capital costs to the water users association electing contract conversion under this subsection, shall be repaid—

(I) for costs equal to less than \$5,000,000, by not later than the date that is 5 years after the date of notification of the allocation; or

(II) for costs equal to \$5,000,000 or more, in accordance with applicable reclamation laws;

(iii) provide that power revenues will not be available to aid in repayment of construction costs allocated to irrigation under the contract; and

(iv) continue in effect for the period during which the water users association pays applicable charges in accordance with section 9(d) of the Act of August 4, 1939 (53 Stat. 1195, chapter 418), and other applicable law.

(3) TREATMENT.—A contract entered into pursuant to this subsection—

(A) shall not be adjusted on the basis of the type of prepayment financing used by the applicable water users association;

(B) shall conform to any other applicable agreement, such as a settlement agreement or a new constructed appurtenant facility agreement; and

(C) shall not modify any other—

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- 1 (i) water service, repayment, exchange, or transfer  
2 contractual right between the water users association, and  
3 the Bureau of Reclamation; or
- 4 (ii) right, obligation, or relationship of the water users  
5 association and an applicable landowner in accordance with  
6 State law.
- 7 (d) Accounting.—
- 8 (1) ADJUSTMENT.—The amounts paid pursuant to subsection (c)  
9 shall be subject to adjustment following a final cost allocation by the  
10 Secretary.
- 11 (2) DEFICIENCIES.—
- 12 (A) IN GENERAL.—If the final cost allocation under paragraph  
13 (1) indicates that the costs properly assignable to a water users  
14 association are greater than the costs paid by the water users  
15 association, the water users association shall be obligated to pay  
16 to the Secretary the remaining allocated costs under an  
17 additional repayment contract under subparagraph (B).
- 18 (B) ADDITIONAL REPAYMENT CONTRACTS.—An additional  
19 repayment contract required by subparagraph (A) shall—
- 20 (i) have a term of—
- 21 (I) not less than 1 year; and
- 22 (II) not more than 10 years; and
- 23 (ii) include such mutually agreeable provisions regarding  
24 the rate of repayment of the deficient amount as may be  
25 developed by the parties.
- 26 (3) OVERPAYMENTS.—If the final cost allocation under paragraph  
27 (1) indicates that the costs properly assignable to a water users  
28 association are less than the costs paid by the water users association,  
29 the Secretary shall credit the amount of the overpayment as an offset  
30 against any outstanding or future obligation of the water users  
31 association.
- 32 (e) Applicability of Certain Provisions.—
- 33 (1) EFFECT OF EXISTING LAW.—On compliance by a water users  
34 association with, and discharge of the obligation of repayment of the  
35 construction costs pursuant to, a contract entered into under to  
36 subsection (c)(2)(B), subsections (a) and (b) of section 213 of the  
37 Reclamation Reform Act of 1982 (43 U.S.C. 390mm) shall apply to  
38 any affected land.
- 39 (2) EFFECT OF OTHER OBLIGATIONS.—The obligation of a water  
40 users association to repay any construction costs or other capitalized

## DISCUSSION DRAFT

cost described in subparagraph (A)(ii) or (B)(ii) of subsection (c)(2), or subsection (d), shall not, on repayment, affect—

(A) the status of the water users association as having repaid all of the construction costs assignable to the water users association; or

(B) the applicability of subsection (a) or (b) of section 213 of the Reclamation Reform Act of 1982 (43 U.S.C. 390mm).

(f) Surface Water Storage Enhancement Program.—

(1) ESTABLISHMENT OF ACCOUNT.—The Secretary shall establish an account, to be known as the “Reclamation Surface Storage Account”, consisting of such amounts as are deposited in the Account under paragraph (2), to fund the construction of surface water storage.

(2) DEPOSITS.—Not later than 3 years after the date of enactment of this Act, an amount equal to 50 percent of receipts generated from the prepayment of contracts under this section in excess of amounts necessary to cover the amount of receipts forgone from scheduled payments under applicable law in effect on that date of enactment during the 10-year period beginning on that date of enactment shall be deposited in the Account.

(3) USE.—

(A) COOPERATIVE AGREEMENTS.—The Secretary may—

(i) enter into cooperative agreements with water users associations for the construction of surface water storage; and

(ii) use amounts in the Account to fund construction under such a cooperative agreement.

(B) TREATMENT.—A surface water storage project that is otherwise not federally authorized shall not be considered to be a Federal facility as a result of the allocation of any amount from the Account for any portion of the project.

(4) REPAYMENT.—Any amount from the Account used for surface water storage construction shall be fully reimbursed to the Account in accordance with applicable requirements under the reclamation laws, except that all funds reimbursed shall be deposited in the Account.

(5) AVAILABILITY OF AMOUNTS.—The amounts deposited in the Account under this subsection shall—

(A) be made available for the storage projects identified in section 402, subject to appropriation; and

(B) be in addition to amounts appropriated for those purposes

## DISCUSSION DRAFT

1 under any other provision of law.

2 (6) PURPOSES OF SURFACE WATER STORAGE.—The construction of  
3 surface water storage under this section shall be made available for  
4 the federally owned and State-led storage projects pursued under this  
5 Act, provided that funds are limited to the Federal cost-share (up to  
6 25 percent for State-led projects and up to 50 percent for federally  
7 owned projects).

8 (g) Effect of Section.—Nothing in this section—

9 (1) alters the repayment obligation of any water service or  
10 repayment contractor receiving water from a water project, or shifts  
11 any costs that would otherwise have been properly assignable to a  
12 water users association described in subsection (c) or another  
13 contractor, absent this section, including operation and maintenance  
14 costs, construction costs, or other capitalized costs incurred after the  
15 date of enactment of this Act; or

16 (2) alters any specific requirement for the disposition of amounts  
17 received as repayments by the Secretary under the reclamation laws.

## 18 TITLE VII—DURATION AND EFFECT ON 19 EXISTING OBLIGATIONS

### 20 SEC. 701. SAVINGS CLAUSE.

21 (a) In General.—This Act shall not be interpreted or implemented in a  
22 manner that—

23 (1) preempts or modifies any obligation of the United States to act  
24 in conformance with applicable State law;

25 (2) affects or modifies any obligation under the Central Valley  
26 Project Improvement Act (Public Law 102–575; 106 Stat. 4706),  
27 except for the procedural provisions relating to public input and  
28 savings provisions for the Stanislaus River predator management  
29 program expressly established by sections 203 and 502; or

30 (3) overrides, modifies, or amends the applicability of the  
31 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq) or the  
32 application of the smelt and salmonid biological opinions to the  
33 operation of the Central Valley Project or the State Water Project.

34 (b) Sense of Congress.—It is the sense of Congress that there is no  
35 conflict between this Act and the salmonid biological opinion, the smelt  
36 biological opinion, the Endangered Species Act of 1973 (16 U.S.C. 1531  
37 et seq.), and the Central Valley Project and State Water Project Drought  
38 Contingency Plan of 2015.

39

## DISCUSSION DRAFT

### 1 SEC. 702. TERMINATION.

2 All of title III (relating to California emergency drought relief and  
3 operational flexibility), except for subsections (a) through (d) of section  
4 301, and title IV (relating to water rights) shall expire on the date that is  
5 the later of—

6 (1) the date on which the Governor of the State of California  
7 declares an end to the State drought emergency; or

8 (2) two years after the date of enactment of this Act.  
9



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# *California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act*

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## **Bill Summary**

### **Overview**

The bill includes **long-term** and **short-term** provisions to help cope with the historic drought in the West.

#### **Long-term:**

With local sponsors as lead, and the federal and state governments providing financial support, the 132 projects identified by **this bill could produce upwards of 1.1 million acre feet in “new” water**, whether through recycling or desalination. The bill does this by:

- Re-authorizing the Desalination Act and providing \$100 million for research, design, and construction of desalination projects (*Sec. 121, pages 21-29*).
- The bill increases funding for WaterSMART from \$350 million to \$500 million and authorizes another \$200 million for recycling through Title XVI (*Sec. 101, pages 9-11*).
- The bill funds RIFIA—a new Reclamation loan and loan guarantee program—at the full \$200 million (*Sec. 131-141, pages 31-44*).
- The bill establishes a new program under Reclamation for providing assistance to communities that have run out of water (*Sec. 101, pages 10-11*).
- **The bill also authorizes \$600 million for storage projects** for storing water from the wet years for use during the dry ones. (*Sec. 112, pages 13-15*).

#### **Short-term:**

The bill provides **maximum assurances** that the bill does not violate any **environmental law**, like the Endangered Species Act or the biological opinions. Here’s how:

- **Information from real-time monitoring determines pumping rates**, not specific congressional mandates or targets.
- **Real-time monitoring will produce the information necessary to operate the system more precisely.** (*Section 301, pages 50-54*)
  - The bill authorizes **daily boat monitoring to survey for smelt near the pumps** when turbidity levels are high and the smelt are often attracted to the pumps. (*Sec. 301, page 51*)
  - This bill also authorizes studies to **identify smelts' location in the Delta on a real-time basis**, so pumping can be increased when the fish are not near the pumps and reduced when fish are present. (*Sec. 301, page 51*)
  - The bill commissions a Delta Smelt Distribution Study to **identify how many smelt are in different parts of the Delta** in drier and wetter years, information that is key to running pumps in a manner that isn't harmful to fish.
- **The bill includes a savings clause** that makes clear the drought bill is consistent with all environmental laws, including the Endangered Species Act and biological opinions. (*Section 701, page 76*)

**Four key goals guide this legislation:**

- **Help communities** most at risk of running out of clean water.
- Provide \$1.3 billion in funding and support for **long-term solutions including water storage, desalination and recycling.**
- **Protect and attempt to restore threatened and endangered species.**
- Modify how the Central Valley Project and State Water Project are operated to **maximize efficiency during the governor's drought emergency declaration** in a manner that adheres to all environmental laws.

## LONG-TERM INVESTMENTS

*(Title I)*

- *This bill authorizes \$1.3 billion in federal support for State and local efforts to increase their drought resiliency.*
- *Here's the ways in which the bill increases investments in California's drought resiliency:*

### **Assistance for drought-stricken communities**

- **Allows rural and disadvantaged communities with fewer than 60,000 residents to apply for grants through a new Reclamation program to help stabilize their water supplies.** Funds can be used for both short-term solutions such as emergency bottled water supplies as well as long-term solutions such as water treatment facilities, wells and connecting homes to centralized water distribution systems. *(Section 101, pages 8-11)*
- Prioritizes State Revolving Funds for communities most at risk of running out of water. Last year, California received more than \$180 million in these funds. **By directing some of these funds to at-risk communities,** the bill provides California with the tools necessary to provide water for public health and safety and to increase drought resiliency. *(Section 102, page 12)*

### **Storage projects**

*(\$600 million through 2025)*

**Storing water during wet years for use in dry years is vital,** given the consensus that droughts will grow more severe.

- Authorizes \$600 million for water storage projects in California and other Western states. These may include both federal projects (Shasta) and non-federal projects (Sites, Temperance Flat, Los Vaqueros). *(Sections 111 and 112, pages 12-15)*
- Establishes **deadlines** for the Bureau of Reclamation **to complete feasibility studies** to allow Calfed storage projects to compete for Proposition 1 bond funds. California's Proposition 1—approved by two-thirds of voters in 2014—**provides \$2.7 billion in storage funding.** This means California projects are expected to compete strongly for the matching federal funds made available by this bill. *(Section 115, page 19)*

- **Updates Army Corps dam operations** to increase water supply while reducing flood risk. (*Section 113, pages 15-18*)

### **Desalination**

*(\$100 million through 2020)*

- Identifies **27 desalination projects throughout California** capable of producing more than 330,000 acre-feet of water per year. The Secretary of the Interior would be required to consider these projects for funding. (*Section 121*)
- Reauthorizes the *Desalination Act* and authorizes the following funds (*Section 122 pages 27-29*):
  - This section also authorizes \$50 million over five years for desalination research projects, such as **improving existing reverse osmosis and membrane technology**, reducing the environmental effects of seawater desalination and developing next-generation technologies to reduce the cost of desalination.
  - \$50 million over five years for feasibility and design for both sea and brackish water desalination projects. Senator Boxer also introduced legislation that would reauthorize the *Desalination Act*, but at lower funding levels.

### **Water recycling**

*(\$350 million through 2020)*

- The bill identifies **105 water recycling and reuse projects** with the potential to provide more than 853,756 acre-feet per year of “new” water. (*Section 121, pages 21-27*)
- Increases the authorization for the Bureau of Reclamation’s **WaterSMART program from \$350 million to \$500 million**. These grants are for long-term water conservation, reclamation and recycling projects, including small-scale storage and reclamation projects. (*Section 101, page 10*)
- Authorizes **\$200 million for water-recycling projects** through Title XVI that reclaim and reuse wastewaters and naturally impaired ground and surface water. (*Section 123, pages 29-31*).

**RIFIA and WaterSense**  
*(\$210 million through 2020)*

By providing funds for the most cost-effective federal programs, Washington can help state and local agencies leverage existing dollars into larger projects.

- **Reclamation Infrastructure Finance and Innovation Act (RIFIA):** Authorizes **\$200 million RIFIA**. This loan-guarantee and low-cost loan program will allow water districts and municipalities to leverage loans and loan guarantees for water projects, reducing repayment loan costs by as much as 25 percent. This is modeled after TIFIA, a successful loan-guarantee program for transportation projects. (*Subtitle IV.E; Sections 131 through 141, pages 31-44*)
- **WaterSense:** Authorizes **\$10 million for EPA’s WaterSense program**, which provides information on which household products are water-efficient. The program is modelled after the successful Energy Star program for energy efficient household appliances. (*Section 124, page 31*)

**ACTIONS TO BENEFIT FISH AND WILDLIFE**  
*(Title II)*

**Protecting fish populations**  
*(\$45 million through 2020)*

- The bill includes **\$45 million to assist in the protection and recovery of fish populations**. (*Section 201, pages 44-46*)
- Directs federal agencies to develop and implement a pilot program—funded by local water districts—to **protect threatened and endangered salmon and steelhead by removing non-native predator fish** from the Stanislaus River, such as striped bass, smallmouth bass, largemouth bass and black bass. (*Section 203, pages 47-50*)
- Directs federal agencies to develop and implement pilot projects to **reduce invasive aquatic vegetation to improve survival and recovery of endangered fish**. Invasive species—such as water hyacinth—have played major roles in the decline of listed fish in the Bay-Delta, including the Delta Smelt. (*Section 204, pages 50*)

**Assisting refuges for migratory birds**  
*(additional \$2 million annually through 2020)*

- Authorizes an additional \$2 million dollars per year to **improve water conveyance infrastructure**, which will help deliver water to wildlife refuges. *(Section 202, pages 46-47)*

**SHORT-TERM, TEMPORARY OPERATIONS**  
*(Title III)*

- *Includes six provisions to move water during the drought in California all while operating within environmental laws and regulations.*
- *Also includes language that makes clear all actions must be taken consistent with law and that none of the provisions violate the Endangered Species Act, the Clean Water Act, the biological opinions, or state law*
- *Since the recycling, desalination, and storage projects this bill identifies will take years, and in some cases decades to construct, we cannot overlook the importance of short-term relief.*

**Environmental protections**

- The legislation includes a “savings clause” making clear that **nothing in the bill overrides or modifies the *Endangered Species Act* or any other environmental law.** *(Section 701, page 76)*
- **The federal agencies with expertise in the *Endangered Species Act*** (the National Marine Fisheries Service and U.S. Fish and Wildlife Service) **helped write the operations provisions to ensure pumping is in compliance with environmental laws and biological opinions.**

**Real-time monitoring to protect fish species**

- **Equips the agencies with the tools necessary to operate the system more precisely**, by pumping when the fish are close to the pumps and ratcheting down pumping when the fish are close. *(Section 301, pages 50-54)*
  - Authorizes **daily boat monitoring to survey for smelt near the pumps** when turbidity levels are high and the smelt are often attracted to the pumps.

- Authorizes studies to **identify smelts' location in the Delta on a real-time basis**, so pumping can be increased when the fish are not near the pumps and reduced when fish are present.
- Authorizes a Delta Smelt Distribution Study to **identify how many smelt are in different parts of the Delta** in drier and wetter years, information that is key to running pumps in a manner that isn't harmful to fish.

### Temporary Operational Provisions

#### 1) **Pumping at the high end of the Delta Smelt provision** (*Section 301(e), pages 52-53*):

- **How the provision works:** The revised bill gives the agencies the discretion to choose at what level to pump, based on real-time monitoring, updated studies, and the most up-to-date science.
- The revised text simply requires the agencies to explain why pumping at the high end of the smelt biological opinion would cause adverse effects to fish, if they decide to pump at a lower levels. This is a straightforward request: That the agencies exercise their discretion to pump as environmental conditions dictate but provide explanations for the decisions they make

#### 2) **Winter Storms and “payback”** (*Section 303, pages 58-60*):

- **How the provision works:** The revised bill authorizes the agencies to increase pumping during winter storms, and allows the agencies to use their best judgment to determine what level of outflows is the appropriate trigger for increased pumping.
- Given that the agencies have discretion when to increase pumping, litigation risk is greatly reduced.
- **Payback:** Once those storms are over, the agencies would no longer be required to “pay back” the water that was already pumped, unless there was an environmental reason. (*Section 303*)

#### 3) **1:1 transfer ratio:** Provides incentives for increased water transfers. Water transfers sent into the Delta in April and May can only be withdrawn at a 1:1 ratio if the transfers adhere to environmental law and biological opinions. (*Section 302(b)(6), pages 55-56*)

- Given this year's El Niño storms, this provision could provide some relief. Contractors can currently transfer 100% of transfer water because San Joaquin Valley is “critically dry,” and the biological opinion allows a “1:1 ratio” – if the river flows at 1,000 cubic feet per second, then water can be transferred at the same rate.

- Maintaining a 1:1 ratio for transfers through the spring and early summer will ensure that 100% of the water identified for a transfer goes to the communities that need it most, unless there is a sound environmental reason to allow some of that water to be lost through the Delta.
- 4) **Extended window for water transfers :** The Draft Bill extends the window for transfers from April 1 to November 30 (currently July 1 to September 30), if the extended transfers can be done consistent with the biological opinions. (Section 302(b)(6), pages 55-56)
- 5) **Reviewing transfers and barriers:** Environmental reviews of water transfers and the installation and removal of temporary barriers must be completed within 60 days, unless an environmental impact statement is required. (Sec. 302(b)(7)-(9), pages 56-57)
- 6) **Delta Cross-Channel Gates:** The bill requires the Secretary of the Interior and the Secretary of Commerce to take steps to ensure the Gates remain open to the greatest extent possible. (Section 302(b)(7), page 56)
- When the gates are closed, CVP and SWP water stored in Shasta, Oroville and Folsom must be released to reduce salinity in the Interior Delta, resulting in the loss of water that would otherwise be delivered to contractors.
  - This requirement will help control salinity in the Interior Delta and avoid mandatory releases of CVP and SWP water supplies.

## **ADDITIONAL PROVISIONS**

*(Titles IV and V)*

- Protect and preserve water rights and ensure that some State Water Project and Central Valley Project water contractors do not benefit from the legislation at the expense of others. (Sections 401 to 404, pages 60-64)
- Authorizes the Bureau of Reclamation to expand its service area to include Kettleman City and directs the Bureau of Reclamation to enter into a long-term contract with the Kettleman City Community Services District to **provide them up to 900 acre feet of water**. Kettleman City residents have struggled with contaminated groundwater for years, and this provision would help ensure Kettleman City's 1,500 residents secure access to clean water supplies. (Section 501, pages 64-65)
- This section requires the Secretary of the Interior to **publish expenditures and an evaluation of those expenditures for the Restoration Fund** (in 2014,



revenues were approximately \$53 million), publicize a draft work plan for the upcoming year and solicit public comment. (*Section 502, page 65*)

- Directs the Department of the Interior to **complete its assessment of the risks to water resources** in specific watersheds posed by climate change. (*Section 503, pages 65-66*)
- *If requested*, the Departments of Interior and Commerce are required to provide technical and modeling assistance to the State Water Resources Control Board in protecting water quality during the drought. (*Section 504, page 66*)
- Directs the Bureau of Reclamation to **publish an annual report on water releases for benefit of fish** and evaluate their environmental benefits. (*Section 505, page 66*)
- Requires the Bureau of Reclamation to **identify potential additional storage capacity in New Melones Reservoir** that may be made available to local water and irrigation districts in the Stanislaus River Basin. (*Section 506, page 66-67*)
- Facilitates efforts by the California Department of Water Resources and U.S. Fish and Wildlife Service to **construct a unified federal/state Delta Research Station at the old Rio Vista Army Base**. (*Section 507, page 67*)
- Allows Departments of Interior and Commerce to **provide a single annual report** under the reporting requirements of the Act to reduce the burden on the agencies. (*Section 508, page 67*)

## **PAYING FOR THE BILL**

*(Title VI)*

- Based on recently enacted legislation to **deauthorize inactive Army Corps of Engineers projects**, this section requires the Secretary of the Interior to identify projects and program that have not received funding in the past five years. After providing an opportunity for public comment and congressional disapproval, the Interior Secretary may formally deauthorize those projects or programs. (*Section 601, pages 67-71*)

Estimated by the Bureau of Reclamation to provide between \$700 million and \$1.3 billion.

- Directs the Department of the Interior to **convert certain existing water service contracts** between the United States and water users' associations to repayment contracts **to allow for prepayment** of such contracts, upon the request of the contractor. Requires a specified percentage of certain receipts generated from prepayment of contracts under this title to fund the construction of CALFED surface water storage. Estimated by the Bureau of Reclamation to provide \$630 million. (Sec.602, pages 71-76)

## **DURATION**

*(Title VII)*

- **The temporary provisions will sunset two years after the date of enactment or when the governor's drought declaration ends, whichever is later.** (Sec. 702, page 91)

**From:** Bernhardt, David L.

**Sent:** Friday, January 22, 2016 8:01 AM

**To:** Johnny Amaral; Dennis Cardoza; 'Denny Rehberg'; Ckaren@sidley.com

**Subject:** No Westlands precall today

Consistent with our protocol, since there is no Westlands call today, there is no precall.

David

David Bernhardt

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**From:** Johnny Amaral  
**Sent:** Friday, January 22, 2016 8:13 AM  
**To:** Denny Rehberg  
**CC:** Bernhardt, David L.; Dennis Cardoza; Ckaren@sidley.com  
**Subject:** Re: No Westlands precall today

On last Friday's call tom cancelled today's call

Best,

Johnny Amaral

On Jan 22, 2016, at 7:12 AM, Denny Rehberg <[DRehberg@mercuryllc.com](mailto:DRehberg@mercuryllc.com)> wrote:

Hadn't heard there was no General call today

> On Jan 22, 2016, at 8:01 AM, Bernhardt, David L. <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)> wrote:

>

> Consistent with our protocol, since there is no Westlands call today, there is no precall.

>

> David

>

> David Bernhardt

>

>

>

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>

.....  
**Mercury.**

**Denny Rehberg**

Co-Chairman

(US Congressman 2001-2013)

The Portrait Building

701 8th Street NW | Suite 650

Washington, DC | 20001

202.261.4000 office | [REDACTED] mobile

[www.mercuryllc.com](http://www.mercuryllc.com)

**From:** Johnny Amaral

**Sent:** Friday, January 22, 2016 8:21 AM

**To:** Ed Manning; Carolyn Jensen; Mike Burns; Gayle Holman; <Empty>; Denny Rehberg; Dennis Cardoza; David Bernhardt; Ryan A. ' 'Smith; Catherine Karen; Karen Clark

**Subject:** No call today

Gang, apparently there's a little bit of confusion about today's call. As a reminder, during last Friday's call, Tom canceled today's call.

Best,

Johnny Amaral

**From:** Johnny Amaral  
**Sent:** Wednesday, January 27, 2016 11:18 AM  
**To:** David Bernhardt  
**Subject:** My lunch meeting got cancelled

I'm driving thru fresno now and should be in Sacto by 12:30. You have plans?

Best,

Johnny Amaral

**From:** Bernhardt, David L.  
**Sent:** Wednesday, January 27, 2016 12:07 PM  
**To:** 'Johnny Amaral'  
**Subject:** RE: My lunch meeting got cancelled

I'm tied up most of the day. I am free after 4 p.m., if you wanted to visit before dinner.

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]  
Sent: Wednesday, January 27, 2016 1:18 PM  
To: Bernhardt, David L.  
Subject: My lunch meeting got cancelled

I'm driving thru fresno now and should be in Sacto by 12:30. You have plans?

Best,

Johnny Amaral

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**From:** Johnny Amaral  
**Sent:** Wednesday, January 27, 2016 4:37 PM  
**To:** Bernhardt, David L.  
**Subject:** Re: My lunch meeting got cancelled

I just finished my 2 o'clock meeting. I need to fill up my truck with gas, and then will head over to the Hyatt. See you in the lobby?

Best,

Johnny Amaral

> On Jan 27, 2016, at 11:08 AM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

>

> I'm tied up most of the day. I am free after 4 p.m., if you wanted to visit before dinner.

>

> -----Original Message-----

> From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]

> Sent: Wednesday, January 27, 2016 1:18 PM

> To: Bernhardt, David L.

> Subject: My lunch meeting got cancelled

>

>

> I'm driving thru fresno now and should be in Sacto by 12:30. You have plans?

>

> Best,

>

> Johnny Amaral

>

>

>

>

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**From:** Bernhardt, David L.  
**Sent:** Wednesday, January 27, 2016 4:58 PM  
**To:** Johnny Amaral  
**Subject:** Re: My lunch meeting got cancelled

Great. I'll meet you there.  
David Bernhardt

> On Jan 27, 2016, at 3:37 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:  
>  
>  
> I just finished my 2 o'clock meeting. I need to fill up my truck with gas, and then will head over to the Hyatt. See you in the lobby?  
>  
> Best,  
>  
> Johnny Amaral  
>  
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>> To: Bernhardt, David L.  
>> Subject: My lunch meeting got cancelled  
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>> I'm driving thru fresno now and should be in Sacto by 12:30. You have plans?  
>>  
>> Best,  
>>  
>> Johnny Amaral  
>>  
>>  
>>  
>> STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney  
privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the  
intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have  
received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.  
>

**From:** Johnny Amaral  
**Sent:** Wednesday, January 27, 2016 5:10 PM  
**To:** Bernhardt, David L.  
**Subject:** Re: My lunch meeting got cancelled

Cool. See you in a couple minutes I'm walking over now

Best,

Johnny Amaral

> On Jan 27, 2016, at 3:58 PM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

>

> Great. I'll meet you there.

> David Bernhardt

>

>

>> On Jan 27, 2016, at 3:37 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>>

>>

>> I just finished my 2 o'clock meeting. I need to fill up my truck with gas, and then will head over to the Hyatt. See you in the lobby?

>>

>> Best,

>>

>> Johnny Amaral

>>

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>>> On Jan 27, 2016, at 11:08 AM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

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>>> Sent: Wednesday, January 27, 2016 1:18 PM

>>> To: Bernhardt, David L.

>>> Subject: My lunch meeting got cancelled

>>>

>>>

>>> I'm driving thru fresno now and should be in Sacto by 12:30. You have plans?

>>>

>>> Best,

>>>

>>> Johnny Amaral

>>>

>>>

>>>

>>>

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>>

**From:** Weaver, Kiel

**Sent:** Thursday, January 28, 2016 4:21 PM

**To:** David Bernhardt; Johnny Amaral

**Subject:** Can one of you call me tomorrow...we have two oversight hearings coming up in February that will be relevant to Westlands

**From:** Johnny Amaral

**Sent:** Friday, January 29, 2016 9:40 AM

**To:** Bernhardt, David L.

**CC:** Weaver, Kiel

**Subject:** Re: Can one of you call me tomorrow...we have two oversight hearings coming up in February that will be relevant to Westlands

Did you guys get a chance to talk? I'm available by cell if you need to talk to me 559-■■■■-■■■■

Best,

Johnny Amaral

On Jan 28, 2016, at 3:26 PM, Bernhardt, David L. <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)> wrote:

Yes.

Sent from my iPhone

On Jan 28, 2016, at 3:21 PM, Weaver, Kiel <[Kiel.Weaver@mail.house.gov](mailto:Kiel.Weaver@mail.house.gov)> wrote:

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**From:** Dunklin, Kristina  
**Sent:** Monday, February 1, 2016 8:43 AM  
**To:** Tom Birmingham (tbirmingham@westlandswater.org); DBernhardt@BHFS.com  
**CC:** Johnny Amaral (jamaral@westlandswater.org)  
**Subject:** BOR Hearing Feb. 11

Hi All –

We will have BOR Commissioner Estevan Lopez in for an Energy and Water Appropriations Hearing next Tuesday, February 11. If you have any questions for the record that you would like Congressman Valadao to submit, please send those to me by the end of the week.

Thanks,  
**Kristina Dunklin**  
Legislative Director  
Congressman David G. Valadao (CA-21)  
1004 Longworth House Office Building  
[kristina.dunklin@mail.house.gov](mailto:kristina.dunklin@mail.house.gov)  
(202) 225-4695

*Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram*



**From:** Johnny Amaral

**Sent:** Monday, February 1, 2016 8:43 AM

**To:** Dennis Cardoza; Denny Rehberg; David Bernhardt; Ryan A. ' 'Smith; Catherine Karen; Ed Manning; Carolyn Jensen; Mike Burns

**Subject:** No call today

I'm tied up till 1 PM. Sorry for the late notice

Best,

Johnny Amaral

**From:** Bernhardt, David L.  
**Sent:** Friday, February 5, 2016 1:23 PM  
**To:** Johnny Amaral (jamaral@westlandswater.org)  
**Subject:** Monday call

I will be unable to participate in the 1 pm call on Monday.

David

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**From:** Johnny Amaral  
**Sent:** Friday, February 5, 2016 2:31 PM  
**To:** Bernhardt, David L.  
**Subject:** Re: Monday call

Slacker

Best,

Johnny Amaral

On Feb 5, 2016, at 12:22 PM, Bernhardt, David L. <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)> wrote:

I will be unable to participate in the 1 pm call on Monday.

David

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**From:** Dunklin, Kristina  
**Sent:** Friday, February 5, 2016 6:35 PM  
**To:** Bernhardt, David L.  
**CC:** Johnny Amaral (jamaral@westlandswater.org); Smith, Ryan A.  
**Subject:** RE: BOR Hearing Feb. 11

Thanks David.

---

**From:** Bernhardt, David L. [mailto:DBernhardt@BHFS.com]  
**Sent:** Friday, February 05, 2016 8:21 AM  
**To:** Dunklin, Kristina  
**Cc:** Johnny Amaral (jamaral@westlandswater.org); Smith, Ryan A.  
**Subject:** RE: BOR Hearing Feb. 11

Kristina: Per your request, here are a few questions for Commissioner Lopez that would be very helpful regarding the drainage legislation.

**To Commissioner:** As you are aware, in September 2015, the United States Department of Justice entered into a settlement agreement with the Westlands Water District concerning the U.S.'s obligation to provide drainage services within Westlands' service area. The settlement would resolve litigation that has been pending for years and allow the U.S. to avoid the costs of meeting its statutory and **court-ordered** drainage obligation, which Reclamation has indicated would cost in excess of \$3.5 billion when indexed for inflation. The settlement would also resolve takings litigation pending against the United States concerning its drainage obligation, which Reclamation has indicated its potential liability could exceed \$2 billion. In return, Westlands would, among other things, be relieved of its capital repayment obligation to the U.S. in an amount of approximately \$375 million. I have introduced legislation to authorize the settlement, H.R. H.R. 4366, the San Luis Drainage Resolution Act.

Q: As an initial matter, can you confirm that the numbers I mentioned are consistent with your understanding?

Q: In light of these figures, in your opinion, doesn't the settlement represent a net benefit to the American taxpayer?

Q: Finally, under the underlying settlement agreement, doesn't the settlement need to be enacted within a year to ensure the settlement proceeds as intended to by the parties? [For Mr. Valadao's reference, the settlement becomes voidable by any party to the agreement if not enacted into law by January 15, 2017.]

---

**From:** Dunklin, Kristina [mailto:Kristina.Dunklin@mail.house.gov]  
**Sent:** Monday, February 01, 2016 10:43 AM  
**To:** Tom Birmingham (tbirmingham@westlandswater.org); Bernhardt, David L.  
**Cc:** Johnny Amaral (jamaral@westlandswater.org)  
**Subject:** BOR Hearing Feb. 11

Hi All –

We will have BOR Commissioner Estevan Lopez in for an Energy and Water Appropriations Hearing next Tuesday, February 11. If you have any questions for the record that you would like Congressman Valadao to submit, please send those to me by the end of the week.

Thanks,

**Kristina Dunklin**

Legislative Director

Congressman David G. Valadao (CA-21)

1004 Longworth House Office Building

[kristina.dunklin@mail.house.gov](mailto:kristina.dunklin@mail.house.gov)

(202) 225-4695

*Please follow Rep. David G. Valadao on Facebook, Twitter, and Instagram*



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**From:** Weaver, Kiel

**Sent:** Tuesday, February 16, 2016 6:51 AM

**To:** Bernhardt, David L. [DBernhardt@BHFS.com]; Birmingham, Thomas (tbirmingham@westlandswater.org)

**CC:** Wong, Bryson

**Subject:** Tom, an official invite for next Wednesday's hearing will be emailed to you later today. Thanks for testifying..

**From:** Tom Birmingham

**Sent:** Tuesday, February 16, 2016 9:39 AM

**To:** 'Weaver, Kiel'

**CC:** 'Bernhardt, David L.'

**Subject:** RE: Tom, an official invite for next Wednesday's hearing will be emailed to you later today. Thanks for testifying..

Thank you. I will see you next week.

**From:** Weaver, Kiel [mailto:Kiel.Weaver@mail.house.gov]

**Sent:** Tuesday, February 16, 2016 5:51 AM

**To:** Bernhardt, David L. [DBernhardt@BHFS.com] <DBernhardt@BHFS.com>; Birmingham, Thomas (tbirmingham@westlandswater.org) <tbirmingham@westlandswater.org>

**Cc:** Wong, Bryson <Bryson.Wong@mail.house.gov>

**Subject:** Tom, an official invite for next Wednesday's hearing will be emailed to you later today. Thanks for testifying..

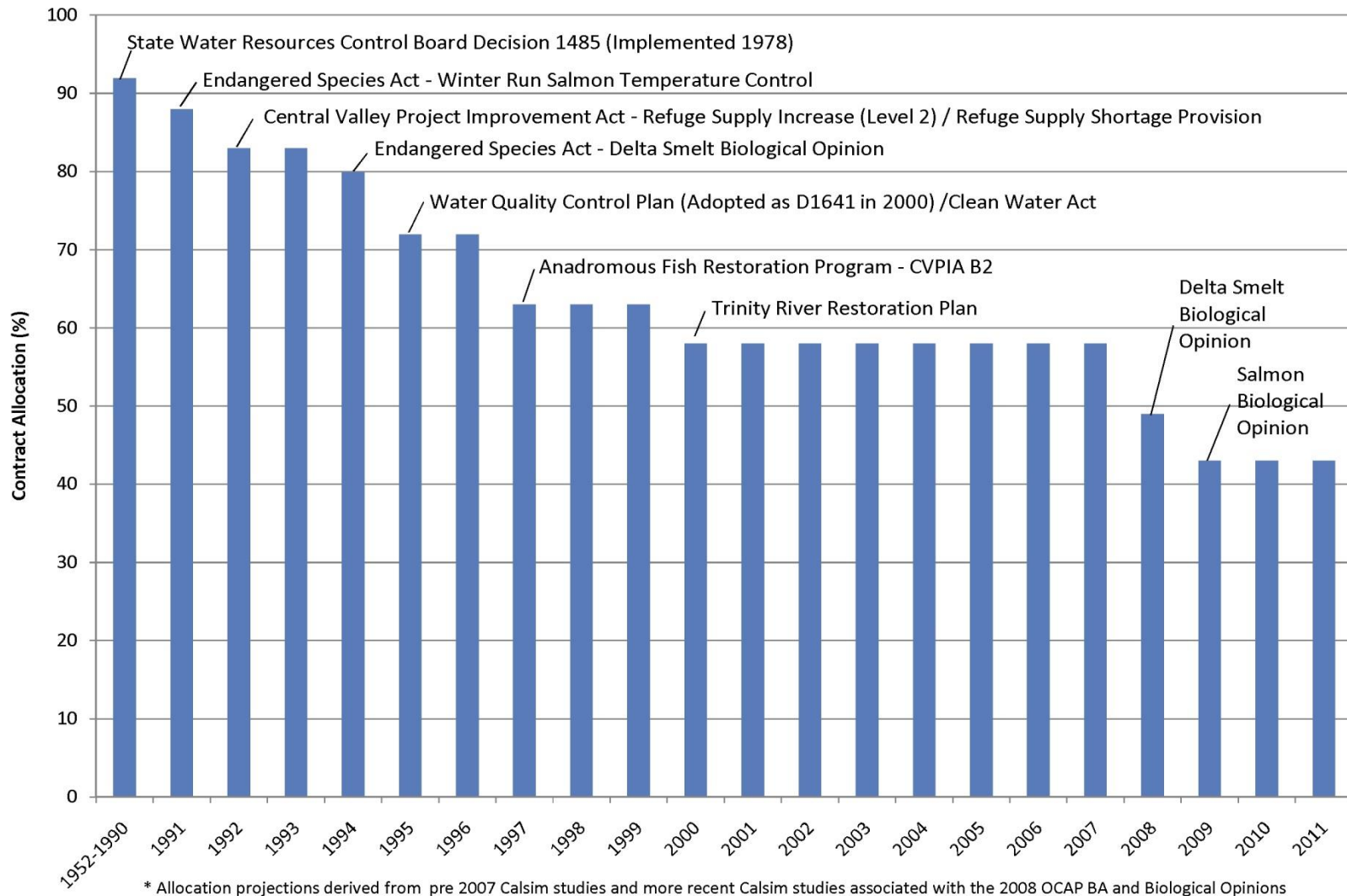
**From:** Jason Peltier  
**Sent:** Thursday, February 18, 2016 11:19 AM  
**To:** Kiel Weaver; Johnny Amaral; Daniel Errotabere; David Bernhardt  
**Subject:** Fwd: here is my powerpoint for esa panel  
**Attachments:** PPT FFA ESA.PPTX; ATT00001.htm

Also having a graph made that shows Smelt take and water loss by year.

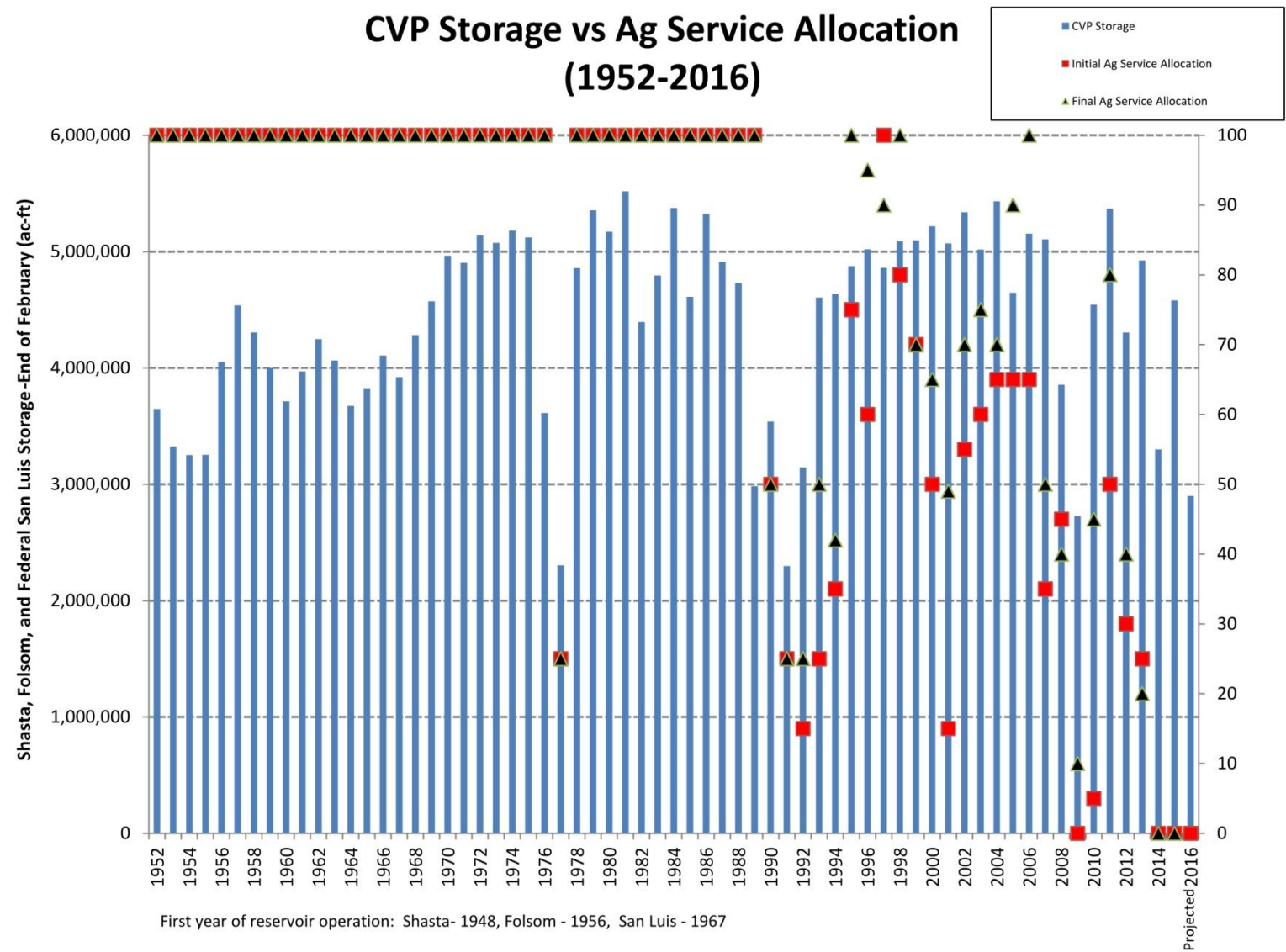
# Delta Smelt



## Long Term Average, CVP S. of Delta Ag Service Contract Allocation

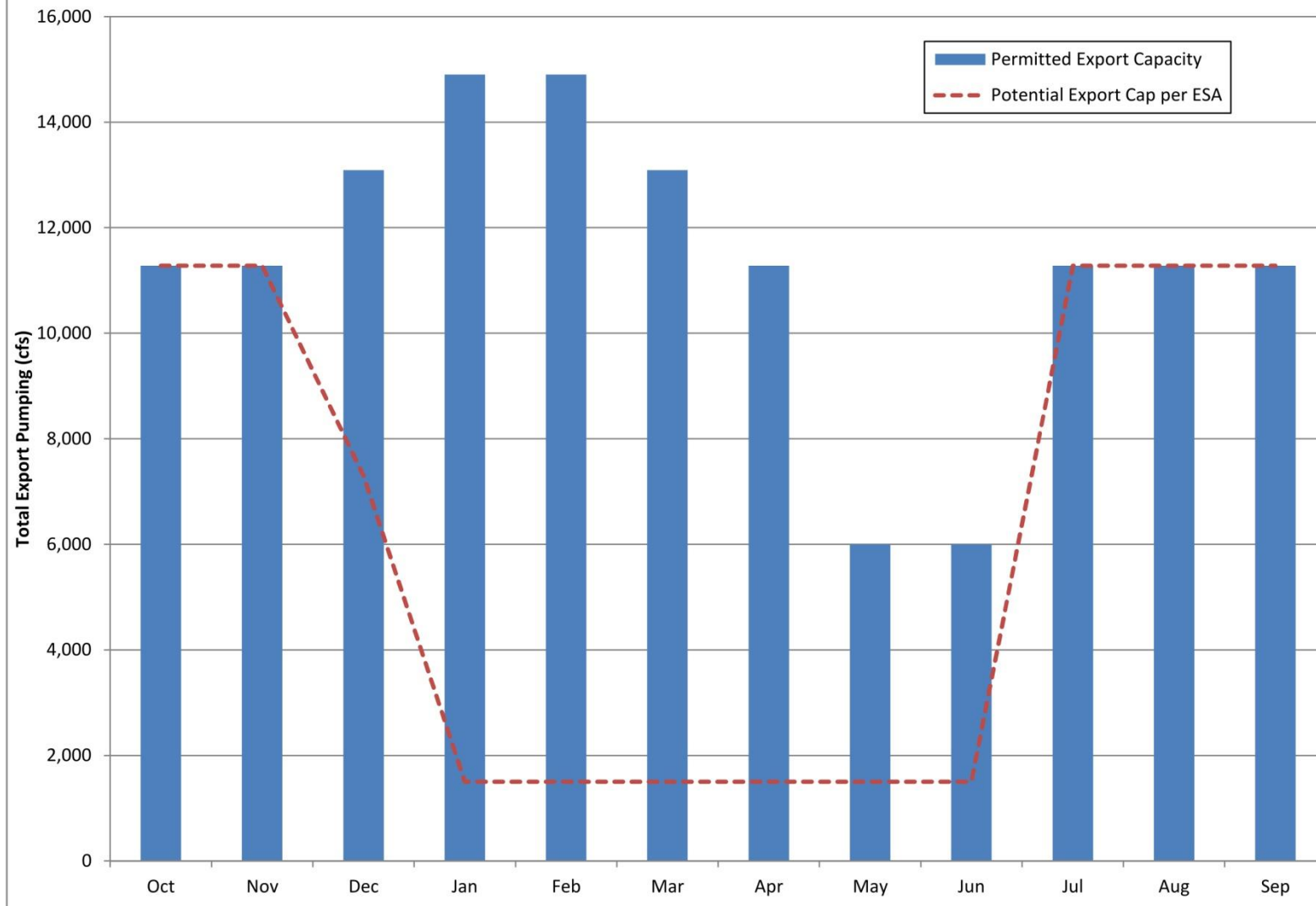


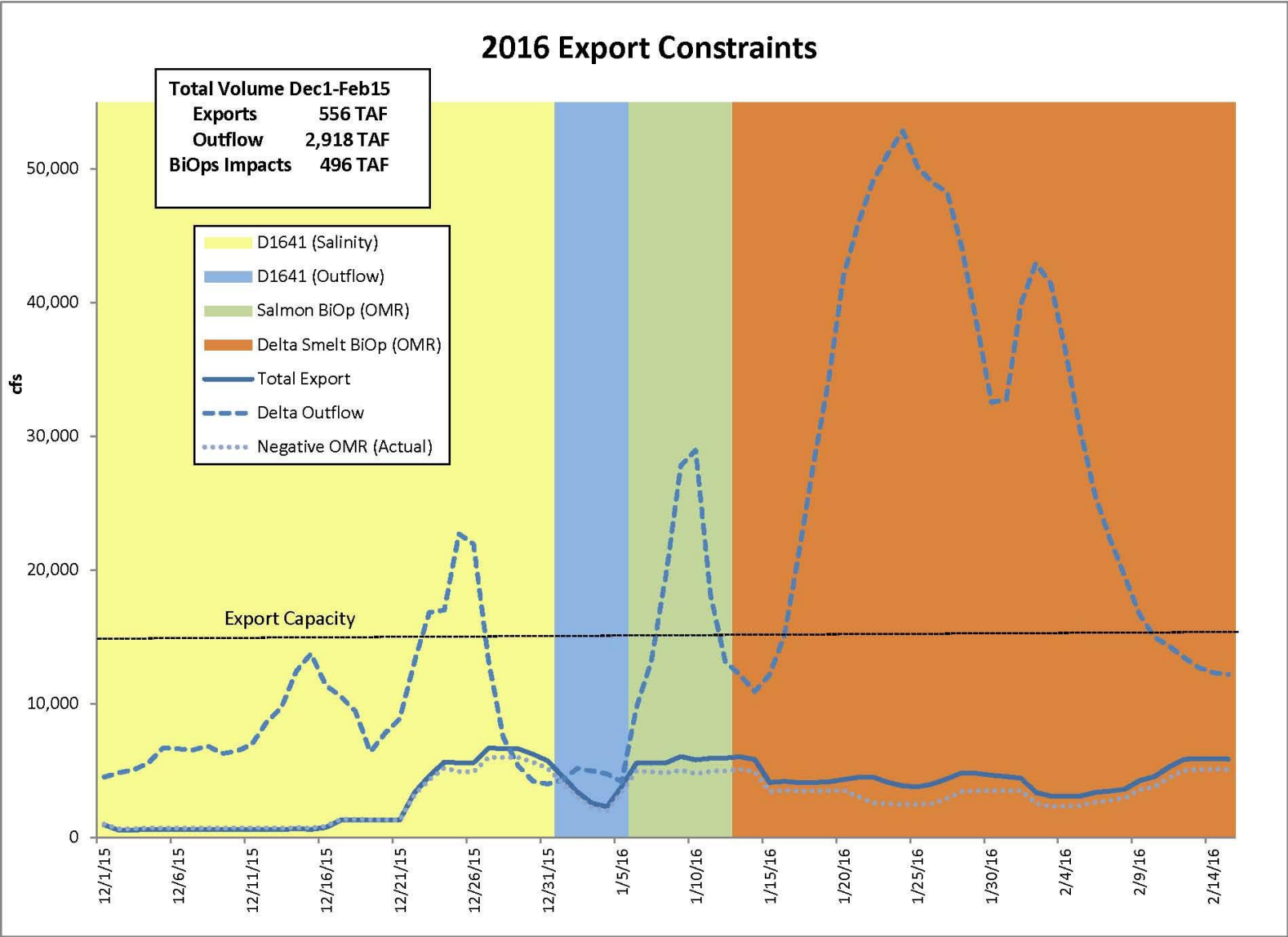
## CVP Storage vs Ag Service Allocation (1952-2016)



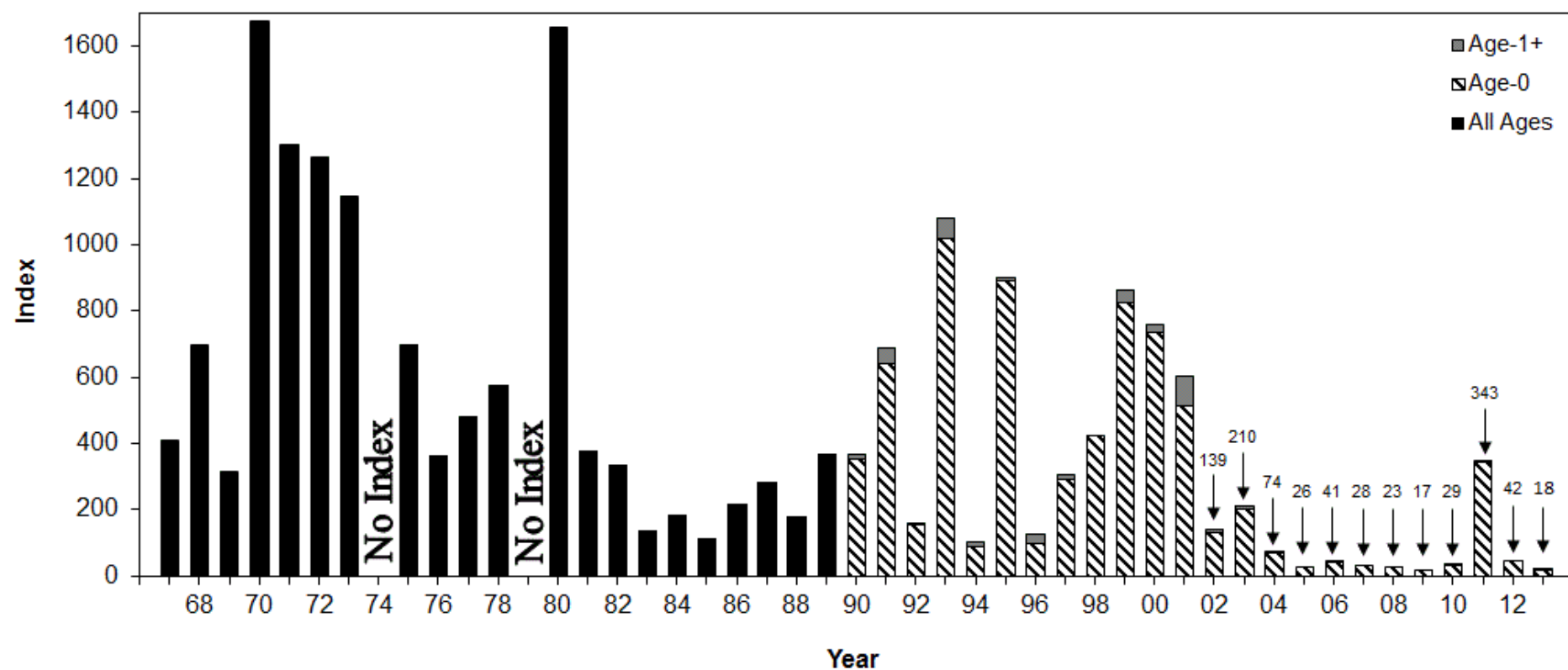


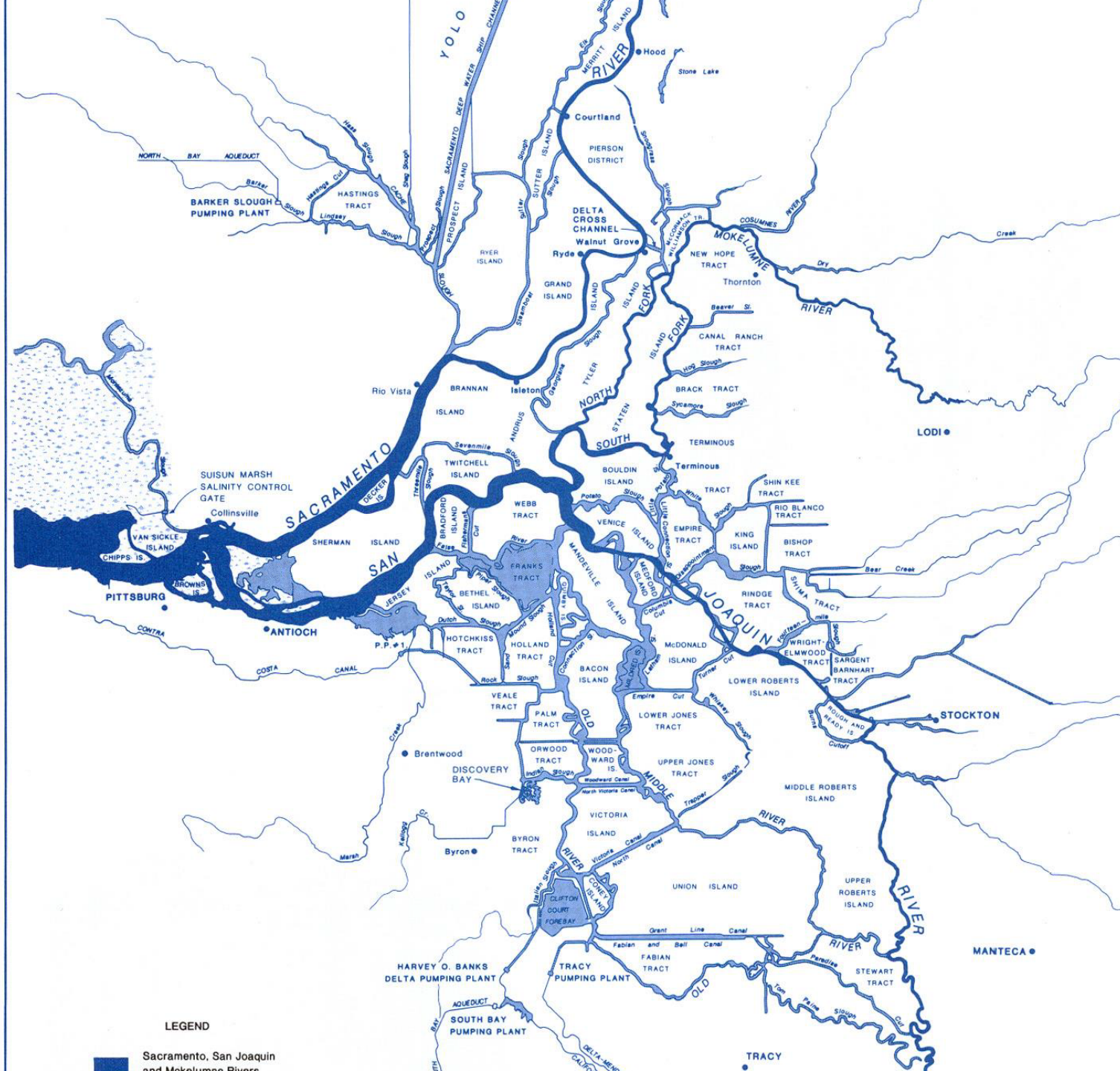
### Export Capacity vs ESA Restriction Periods





# Delta Smelt Indices From 1967-2013





LEGEND


Sacramento, San Joaquin  
and Mokelumne Rivers

## Past: WY 2015 Incidental Take Method

### 3 step procedure

(1) Fit this regression model

$$\log_{10} \left( \frac{\text{Total Salvage}}{\text{FMWT Index}} \right) = \beta_0 + \beta_1 * \text{Secchi} + \beta_2 * \text{OMR} + \epsilon$$


$$\text{ratio} = \frac{\text{Total Salvage}}{\text{FMWT Index}} = 10^{\beta_0 + \beta_1 * \text{Secchi} + \beta_2 * \text{OMR} + \epsilon}$$

(2) Generate a Monte Carlo sample of the historical Secchi and OMR values and plug sample values into the fitted regression model to yield distribution of ratios.

(3) Use 80<sup>th</sup> percentile of ratios, 21.81, as “particular” ratio, and multiply by 2014 FMWT index, 9, to yield IT:

$$\text{IT} = \text{Ratio} * \text{FMWT Index} = 21.81 * 9 = 196.$$



# Present: Revised Interim IT Method

## 4 step procedure

- (1) Fit this regression model

$$\log_{10} \left( \frac{\text{Total Salvage}}{\text{December Abundance}} \right) = \beta_0 + \beta_1 * \text{Secchi} + \beta_2 * \text{OMR} + \epsilon$$

- (2) Using historical data, **estimate the joint probability distribution of Secchi and OMR values.**

- (3) Generate a Monte Carlo sample of historical Secchi and OMR values **from RPA compliant subspace**. Plug sample values into the fitted regression model to yield distribution of ratios.

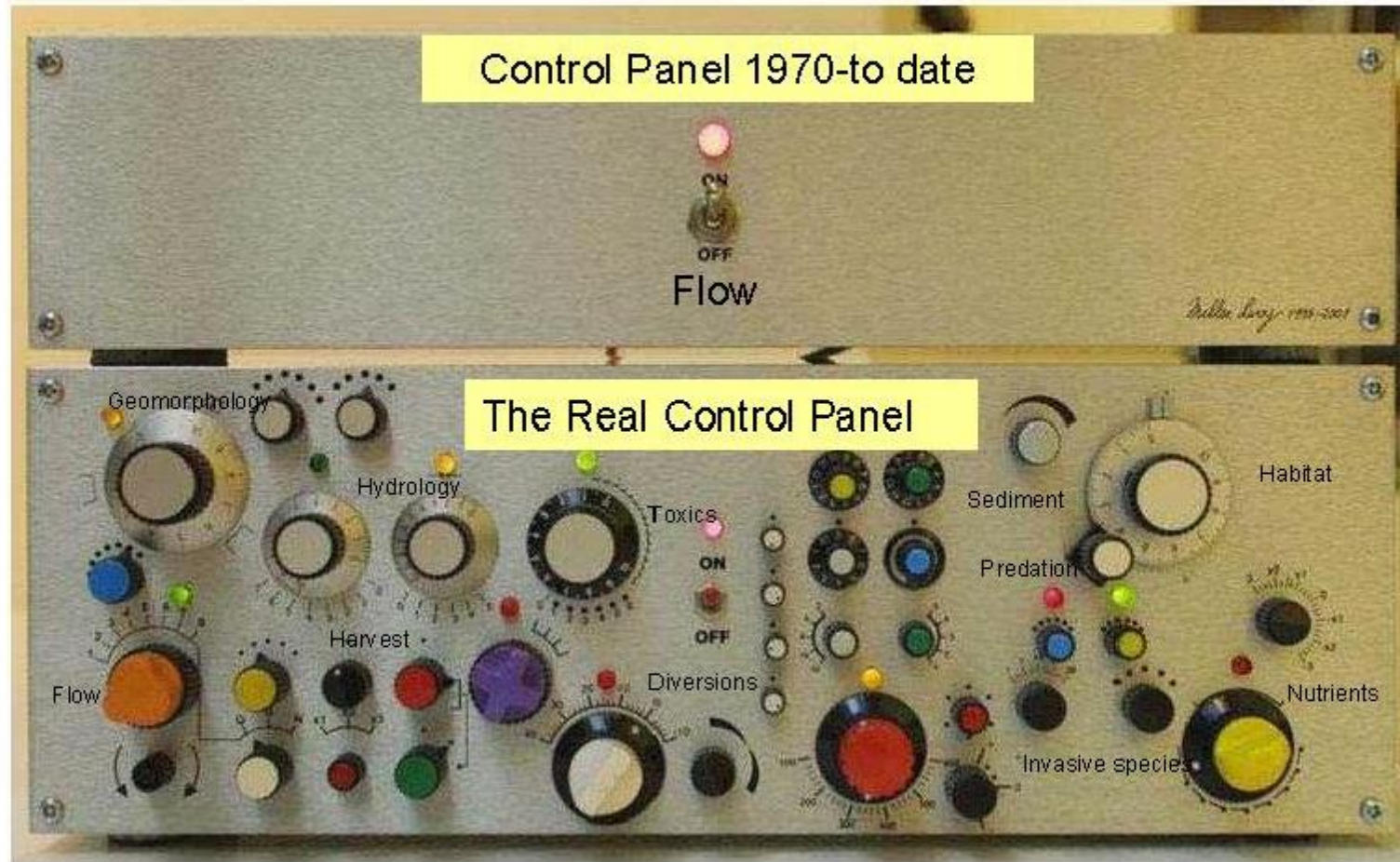
- (4) Use 80<sup>th</sup> percentile of ratios, 0.84, as “particular” ratio, and multiply by estimated **2015 December Abundance**, ??, to yield IT:

$$\text{IT} = \text{Ratio} * \text{2015 December Abundance} = 0.84 * ?? = ??.$$





# Delta Ecosystem Management



Winter-run Chinook Salmon Stressor Matrix

Population	Pop Weight (0-1) Sum to 1	Life Stage	Life Stage Weight (0-1) Sum to 1	Primary Stressor Category	Primary Stressor Weight (0-1) Sum to 1	Specific Stressor	Specific Stressor Weight (0-1) Sum to 1	Composite Weight (X100)	Number of Specific Stressors	Normalized Weight (Composite * # of specific stressors)	Overall Stressor Category
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Flow Conditions	0.125	Flow Dependent Habitat Availability in the lower Sacramento River	0.200	0.813	5	4.06	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Entrainment	0.075	Individual Diversions in the Delta	0.225	0.548	7	3.84	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Entrainment	0.075	Jones and Banks Pumping Plants	0.225	0.548	7	3.84	VH
Sacramento River	1	Adult Immigration and holding	0.1	Passage Impediments/Barriers	0.425	Red Bluff Diversion Dam	0.150	0.638	6	3.83	VH
Sacramento River	1	Embryo Incubation	0.25	Harvest/Angling Impacts	0.150	Redd disturbance in upper Sacramento River	1.000	3.750	1.00	3.75	H
Sacramento River	1	Adult Immigration and holding	0.1	Flow Conditions	0.200	Low Flows - attraction, migratory cues AND Flood Flows - non-natal area attraction in Lower Sacramento River	0.600	1.200	3	3.60	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Floodplain Habitat	0.075	Loss of Floodplain Habitat in the Delta	0.350	0.853	4	3.41	H
Sacramento River	1	Spawning	0.325	Flow Conditions	0.100	Flow Fluctuations in upper Sacramento River	1.000	3.250	1	3.25	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Riparian Habitat and Instream Cover	0.125	Loss of Riparian Habitat and Instream Cover in the upper Sacramento River	0.200	0.813	4	3.25	H
Sacramento River	1	Spawning	0.325	Physical Habitat Alteration	0.100	Limited Instream Gravel Supply in upper Sacramento River	1.000	3.250	1	3.25	H
Sacramento River	1	Spawning	0.325	Short-term Inwater Construction	0.100	Sedimentation, turbidity, acoustic effects, hazardous spills in upper Sacramento River	1.000	3.250	1	3.25	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Natural Morphologic Function	0.150	Loss of Natural Morphologic Function in the middle Sacramento River	0.150	0.731	4	2.93	H
Sacramento River	1	Adult Immigration and holding	0.1	Short-term Inwater Construction	0.150	Sedimentation, turbidity, acoustic effects, hazardous spills in the upper Sacramento River	0.350	0.525	5	2.63	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Water Temperature	0.050	Middle Sacramento River	0.400	0.650	4	2.60	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Entrainment	0.075	Individual Diversions in the lower Sacramento River	0.150	0.366	7	2.56	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Entrainment	0.075	Individual Diversions in the middle Sacramento River	0.150	0.366	7	2.56	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Entrainment	0.075	Individual Diversions in the upper Sacramento River	0.150	0.366	7	2.56	H
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Flow Conditions	0.125	Flow Dependent Habitat Availability in the middle Sacramento River	0.125	0.508	5	2.54	H



# Winter-run Chinook Salmon Stressor Matrix

Population	Pop Weight (0-1) Sum to 1	Life Stage	Life Stage Weight (0-1) Sum to 1	Primary Stressor Category	Primary Stressor Weight (0-1) Sum to 1	Specific Stressor	Specific Stressor Weight (0-1) Sum to 1	Composite Weight (X100)	Number of Specific Stressors	Normalized Weight (Composite * # of specific stressors)	Overall Stressor Category
Sacramento River	1	Adult Immigration and holding	0.1	Passage Impediments/Barriers	0.425	Keswick/Shasta Dam	0.650	2.763	6	16.58	VH
Sacramento River	1	Spawning	0.325	Barrier	0.350	Keswick/Shasta Dam	1.000	11.375	1	11.38	VH
Sacramento River	1	Embryo Incubation	0.25	Flow Conditions	0.250	Flow Fluctuations in upper Sacramento River	1.000	6.250	1.00	6.25	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Natural Morphologic Function	0.150	Loss of Natural Morphologic Function in the Delta	0.300	1.463	4	5.85	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Natural Morphologic Function	0.150	Loss of Natural Morphologic Function in the lower Sacramento River	0.300	1.463	4	5.85	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Riparian Habitat and Instream Cover	0.125	Loss of Riparian Habitat and Instream Cover in the Delta	0.350	1.422	4	5.69	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Riparian Habitat and Instream Cover	0.125	Loss of Riparian Habitat and Instream Cover in the lower Sacramento River	0.350	1.422	4	5.69	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Predation	0.150	Predation in the Delta	0.225	1.097	5	5.48	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Predation	0.150	Predation in the lower Sacramento River	0.225	1.097	5	5.48	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Predation	0.150	Predation in the middle Sacramento River with emphasis on anthropogenically-created predation opportunities at GCID, RBDD and other structures	0.225	1.097	5	5.48	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Predation	0.150	Predation in the upper Sacramento River with emphasis on anthropogenically-created predation opportunities at ACID and other structures	0.225	1.097	5	5.48	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Flow Conditions	0.125	Changes in Delta Hydrology	0.250	1.016	5	5.08	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Flow Conditions	0.125	Diversion into Central Delta	0.250	1.016	5	5.08	VH
Sacramento River	1	Embryo Incubation	0.25	Short-term Inwater Construction	0.200	Sedimentation, turbidity, acoustic effects, hazardous spills, physical disturbance	1.000	5.000	1.00	5.00	VH
Sacramento River	1	Embryo Incubation	0.25	Water Quality	0.200	Water Pollution in upper Sacramento River	1.000	5.000	1.00	5.00	VH
Sacramento River	1	Embryo Incubation	0.25	Water Temperature	0.200	Water Temperature in upper Sacramento River	1.000	5.000	1.00	5.00	VH
Sacramento River	1	Juvenile Rearing and Outmigration	0.325	Loss of Natural Morphologic Function	0.150	Loss of Natural Morphologic Function in the upper Sacramento River	0.250	1.219	4	4.88	VH
Sacramento River	1	Spawning	0.325	Spawning Habitat Availability	0.150	Habitat Suitability in in upper Sacramento River	1.000	4.875	1	4.88	VH
Sacramento River	1	Spawning	0.325	Water Temperature	0.150	Upper Sacramento River	1.000	4.875	1	4.88	VH
Sacramento River	1	Adult Immigration and holding	0.1	Harvest/Angling Impacts	0.100	Ocean	0.700	0.700	6	4.20	VH

From the 9<sup>th</sup> Circuit Decision, which overturned Wanger ESA ruling in the Delta Smelt case. Life in a D- world.

“[T]he BiOp is a bit of a mess. And not just a little bit of a mess, but, at more than 400 pages, a big bit of a mess. And the FWS knew it.”

“The BiOp is a jumble of disjointed facts and analyses.”

“It is a ponderous, chaotic document, overwhelming in size, and without the kinds of signposts and roadmaps that even trained, intelligent readers need in order to follow the agency’s reasoning.”

From the same 9<sup>th</sup> Circuit Decision, which affirmed Wanger's NEPA ruling:

“[I]t is beyond dispute that Reclamation's implementation of the BiOp has important effects on human interaction with the natural environment. We know that millions of people and vast areas of some of America's most productive farmland will be impacted by Reclamation's actions. Those impacts were not the focus of the BiOp.... We recognize that the preparation of an EIS will not alter Reclamation's obligations under the ESA. But the EIS may well inform Reclamation of the overall costs — including the human costs — of furthering the ESA.”



**From:** Johnny Amaral  
**Sent:** Thursday, February 18, 2016 4:46 PM  
**To:** David Bernhardt  
**Subject:** Dinner on monday

Do you have somebody at Brownstein that can find us a restaurant for Monday night? Party of eight for 7 PM. One of our directors is coming to DC with us. The new director named William Bordeaux.

Best,

Johnny Amaral

**From:** Weaver, Kiel

**Sent:** Friday, February 19, 2016 10:19 AM

**To:** David Bernhardt; Johnny Amaral; Birmingham, Thomas (tbirmingham@westlandswater.org)

**Subject:** democrat witness for next week's hearing....

Richard Pool

President and Owner Pro-Troll Fishing Products

Email [rbpool@protroll.com](mailto:rbpool@protroll.com) (this email may currently be down)

Backup email [action@water4fish.org](mailto:action@water4fish.org)

Phone (925) [REDACTED] - [REDACTED]

Mailing Address

Pro-Troll Fishing Products

5700A Imhoff Drive

Concord, CA 94520

**From:** Tom Birmingham  
**Sent:** Sunday, February 21, 2016 11:33 PM  
**To:** 'Wong, Bryson'  
**CC:** 'Semanko, Alex'; 'Bernhardt, David L.'; 'Johnny Amaral'  
**Subject:** RE: Invitation to Testify at Sub on WPO Ov Hrg 02.24.16  
**Attachments:** Birmingham Testimony re 2016 Water Supply Conditions.docx; 114th Disclosure Form 02 24 16.doc

Bryson,

Attached are my written testimony and disclosure form for the February 24, 2016, hearing. I look forward to seeing you then.

Thank you,  
Tom

---

**From:** Semanko, Alex [mailto:Alex.Semanko@mail.house.gov]  
**Sent:** Tuesday, February 16, 2016 10:30 AM  
**To:** 'tbirmingham@westlandswater.org' <tbirmingham@westlandswater.org>  
**Cc:** Wong, Bryson <Bryson.Wong@mail.house.gov>  
**Subject:** Invitation to Testify at Sub on WPO Ov Hrg 02.24.16

Good afternoon Mr. Birmingham,

Attached is an invitation to testify before the House Subcommittee on Water, Power and Oceans oversight hearing, *"The 2016 California Water Supply Outlook During the El Niño and Three Years of Restricted Water Deliveries."*

This hearing will be held on **Wednesday, February 24, 2016 at 10:00 a.m. in room 1324 Longworth House Office Building**. Please note that the '114th testimony & disclosure requirements' document (attached) states that all materials must be received by the Committee at least 48 hours before the day of the hearing. Please forward the electronic copy of the testimony and the disclosure form in Word format, to Bryson Wong, at [Bryson.wong@mail.house.gov](mailto:Bryson.wong@mail.house.gov).

Please reply to this email to confirm receipt of invitation.

Should you have any questions or need additional information, please feel free to contact Bryson Wong, Majority staff of the Subcommittee on Water, Power and Oceans with any questions, at [\(202\) 225-8331](tel:2022258331).

**Alex Semanko**

Clerk  
Subcommittee on Water, Power and Oceans  
House Committee on Natural Resources  
1522 Longworth House Office Building  
Washington, DC 20515

(202) 225-8331 main  
(202) [REDACTED] direct  
(202) 226-6953 fax



Thomas Birmingham  
General Manager  
Westlands Water District

Testimony  
Before the Subcommittee on Water, Power, and Oceans  
Committee on Natural Resources  
United States House of Representatives

*The 2016 California Water Supply Outlook During the El Nino  
And Three Years of Restricted Water Deliveries*  
February 24, 2016



Mr. Chairman and Members of the Subcommittee, my name is Thomas W. Birmingham, and I am the General Manager of Westlands Water District ("Westlands" or "District"). Thank you for the opportunity to appear before you today to testify today on one of the most, perhaps the most, important resource issue facing the State of California, its broken water supply infrastructure.

Westlands is a California water district that serves irrigation water to an area of approximately 600,000 acres on the west side of the San Joaquin Valley in Fresno and Kings counties. The District averages 15 miles in width and is 70 miles long. Historically, the demand for irrigation water in Westlands was 1.4 million acre-feet per year, and that demand has been satisfied through the use of groundwater, water made available to the District from the Central Valley Project under contracts with the United States for the delivery of 1.19 million acre-feet, and annual transfers of water from other water agencies.

Westlands is one of the most fertile, productive and diversified farming regions in the nation. Rich soil, a good climate, and innovative farm management have helped make the area served by Westlands one of the most productive farming areas in the San Joaquin Valley and the nation. Westlands farmers produce over 50 commercial fiber and food crops sold for the fresh, dry, and canned or frozen food markets; domestic and export. These crops have a value in excess of \$1 billion.

In April 2011, I testified at a field hearing of the Subcommittee in Fresno, California. At the time I observed that it was ironic that the Subcommittee was in Fresno to hear about drought and the impact of drought on jobs at a time when California's reservoirs were full and rivers, streams, and flood control by-passes were running high. In the years subsequent to 2011, hydrologic conditions in California were dramatically different; in the four years after 2011, California experienced a prolonged drought. However, the wet hydrologic conditions in 2011 and the four subsequent years of drought were not an anomaly. Floods and drought, the continual alteration between these two extremes, is part of the natural cycle of life in California. And California's water supply systems were designed to help the state withstand the impacts of extended drought.

Indeed, the "firm yield" of the Central Valley Project was historically defined as the measure of the availability of water to meet authorized purposes of the Central Valley Project based on the assumed operations of the Project throughout the simulation of the critically dry 1928-34 period, the most severe drought in California's recorded history. Bureau of Reclamation ("Reclamation") decisions concerning the quantities of water that would be made available under water service contracts were based on this measure.

Prior to the enactment and implementation of the Central Valley Project Improvement Act and the application of the Endangered Species Act to the operations of the Central Valley Project, Reclamation's estimate of the availability

of water to meet authorized project purposes during extended drought was reasonably accurate. This is reflected by allocations to south-of-Delta Central Valley agricultural water service contractors during the 1987 – 1992 drought. During the six years of that extended drought allocations were 100%, 100%; 100%; 50%, 25%, and 25%.

Allocations to south-of-Delta Central Valley agricultural water service contractors during the 2012 – 2015 drought demonstrate the degree to which restrictions imposed on operations of the Project have reduced its deliver capability. However, to put the 2012 – 2015 drought into perspective, it must be noted that 2010 and 2011, the two hydrologic years preceding this most recent drought, were above average and significantly wet, respectively. Notwithstanding these wet conditions in 2010 and 2011, the allocation to south-of-Delta Central Valley agricultural water service contractors in 2012, the first year of drought, was only 40%. In 2013, 2014, and 2015 the allocations were 20%, 0%, and 0%, respectively. Moreover, in 2014 and 2015, north-of-Delta agricultural water service contractors and Friant Division Class I contractors also received zero allocations. For the first time in the history of the Central Valley Project, releases had to be made from Millerton Reservoir on the San Joaquin River to meet the United States' obligation to the San Joaquin River Exchange Contractors, and Reclamation was unable to meet its core obligations to Sacramento River settlement contractors and refuges. Stated differently, in the third year of a drought, a drought which was not significantly more severe than prior extended droughts, the Central Valley Project was incapable of meeting even its most basic obligations.

As anticipated, 2016 is an El Nino year and the hydrologic conditions have improved dramatically. According to the California Department of Water Resources' February 1, 2016, manual snow survey, rainfall and the Sierra Nevada snowpack's water content are both markedly improved this water year, and storage in the state's major reservoirs also has increased significantly since January 1. Rainfall in the three regions (northern Sierra Nevada, central Sierra Nevada, and southern Sierra Nevada) tracked by DWR was 123 percent of the historical average between October 1 and January 31. In addition, the water content of the northern Sierra Nevada snowpack was 120 percent of average for the date.

The dramatic improvement of storage in Folsom Reservoir, a Central Valley Project reservoir that has received wide-spread media attention during the drought, is shown in the graph prepared by the California Department of Water Resources attached hereto as Exhibit 1. In fact, storage conditions have improved to the point that on or about February 10, 2016, Reclamation significantly increased releases from Folsom Dam to comply with flood control criteria established for the reservoir.

However, despite improved hydrologic conditions, the outlook for water supplies from the Central Valley Project are not significantly improved. Westlands currently forecasts that the initial allocation for south-of-Delta Central Valley Project agricultural water service contractor will, for the third consecutive year, be zero,

and the allocation is likely to remain at zero. In addition, I am informed that Reclamation has informed the San Joaquin River Exchange Contractors and Friant Division contractors that it is likely releases from Millerton Reservoir will, for the third consecutive year, have to be made to satisfy the United States' obligation to the Exchange Contractors. And despite flood control releases having to be made from Folsom Dam, pumping in the Delta has been reduced.

Reclamation's current inability to make water available to large areas of the Central Valley Project despite improved hydrology is a function primarily of constraints imposed on Project operations under the 2008 biological opinion for the protection of Delta smelt. This fact is illustrated dramatically by the graph attached hereto as Exhibit 2, which depicts Delta inflow and rates of pumping at the Central Valley Project and State Water Project southern Delta pumping plants from December 1, 2015, through February 7, 2016. The red curve on Exhibit 2 indicates the rates of pumping permitted under Water Rights Decision 1641, the California state water rights decision that established operational criteria intended to protect fish and wildlife resources in the Delta. As depicted in Exhibit 2, in early January 2016, when the El Nino rains began to produce increased inflow into the Delta, rates of project pumping were decreased, rather than increased as permitted under D-1641. The decreased rates of project pumping were implemented to comply with the reasonable and prudent alternative established by the Delta smelt biological opinion, and between January 5 and February 7, the Central Valley Project and the California State Water Project lost a combined 397,000 acre-feet.

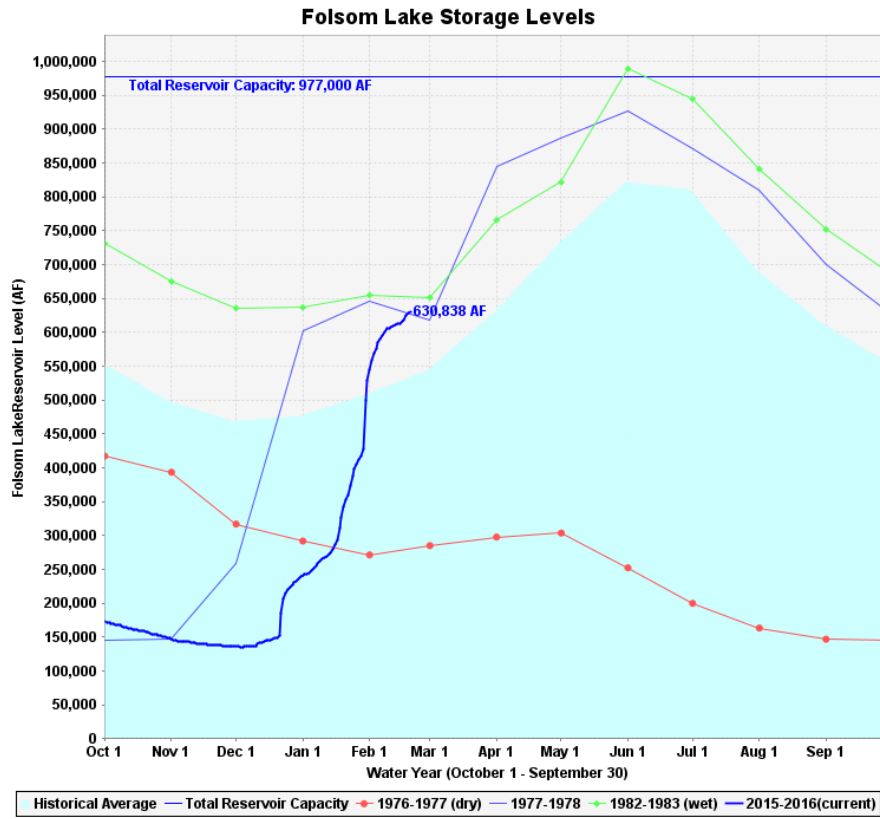
Losses of water resulting from the Delta smelt biological opinion have continued to accumulate, and it is presently estimated that the losses exceed 500,000 acre-feet. The irony, some might say absurdity, of Central Valley Project operations in this El Nino year is demonstrated by a comparison of cumulative Delta pumping by the Central Valley Project for the period from October 1 through February 7 for the 2015 and the 2016 water years. Despite dramatically improved hydrologic conditions in 2016, the Central Valley Project has pumped significantly less water this year, more than 200,000 acre-feet less, compared to same period of the 2015 water year.

I hope my testimony has made it clear that there is a complete disconnect between hydrology and Central Valley Project water supply under the 2008 Delta smelt biological opinion. Since the beginning of December 2105, two Delta smelt have been observed at the fish recovery facilities operated at the Central Valley Project and California State Water Project pumping plants. (These two observed fish are expanded to eight for purposes of the incidental take level established under the Delta smelt biological opinion.) But for reasons beyond explanation by me, Reclamation and the Fish and Wildlife Service have adopted very conservative decisions concerning compliance with the biological opinion's reasonable and prudent alternative.

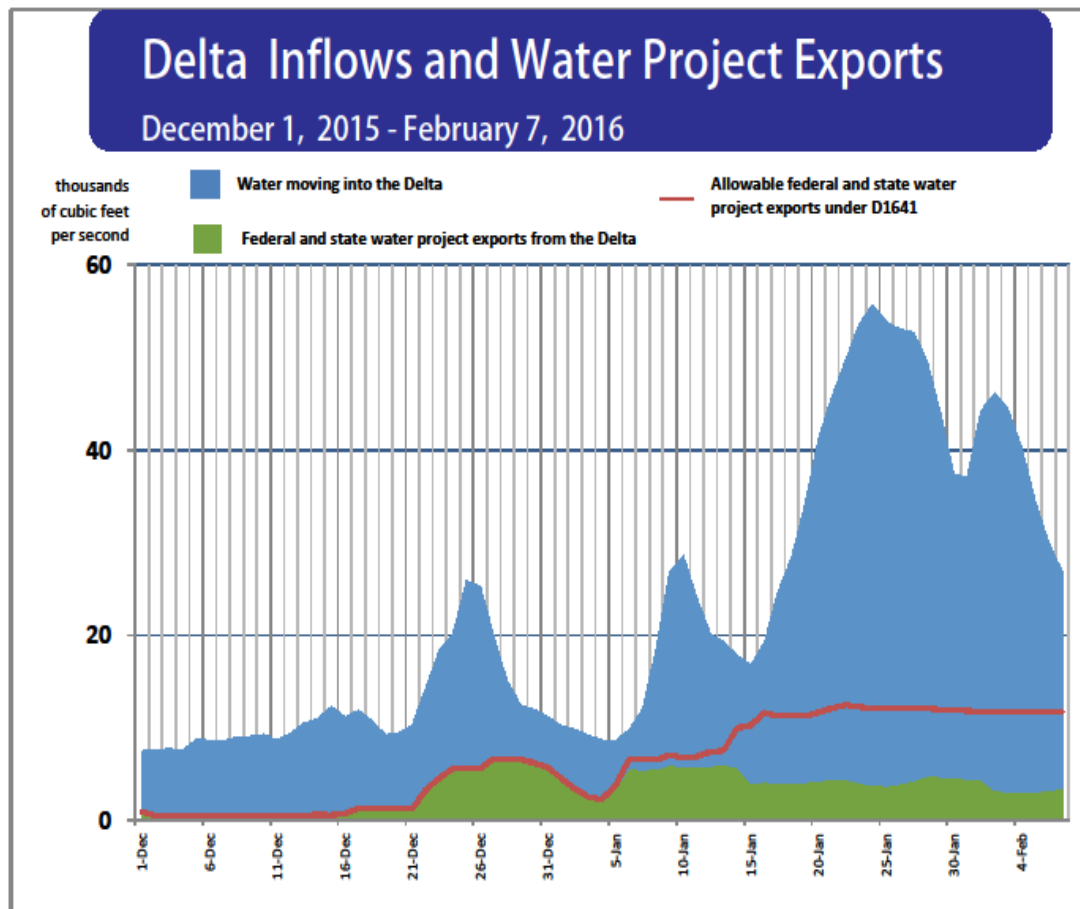
It is beyond reasonable dispute that the continued, prolonged water supply shortages being suffered in the San Joaquin Valley are the result of policy choices made by the federal government, not by hydrologic conditions. As a consequence, it is unlikely that the current El Nino conditions will produce any water supply benefits.

I would welcome any questions from members of the Subcommittee.

## Exhibit 1



## Exhibit 2



T. Boardman, SLDMWA  
2/8/2016

**COMMITTEE ON NATURAL RESOURCES**  
**114<sup>th</sup> Congress Disclosure Form**  
**As required by and provided for in House Rule XI, clause 2(g)(5)**

**Subcommittee on Water, Power and Oceans**  
**Oversight Hearing:**

*"The 2016 California Water Supply Outlook During the El Niño and Three Years of Restricted Water Deliveries"*

**February 24, 2016**

**For Individuals:**

Name:  
Address:  
Email Address:  
Phone Number:

\* \* \* \* \*

**For Witnesses Representing Organizations:**

Name: Thomas W. Birmingham  
Name of Organization(s) You are Representing at the Hearing: Westlands Water District  
Business Address: 3130 N. Fresno Street, Fresno, California 93703  
Business Email Address: tbirmingham@westlandswater.org  
Business Phone Number: (559) 224-1523

\* \* \* \* \*

**For Nongovernment Witnesses ONLY:**

1. Please attach/include current curriculum vitae or resume.

I do not possess a curriculum vitae or resume. I received an AB from UCLA in 1977 and a Juris Doctor, with Distinction, from the University of the Pacific, McGeorge School of Law, in 1983. I practiced water law from 1986 through 2000 and have been general manager of Westlands Water District from October 1, 2000 through the present.

2. Please list any federal grants or contracts (including subgrants or subcontracts) related to the subject matter of the hearing that were received in the current year and previous two calendar years by you or the organization(s) you represent at this hearing, including the source and amount of each grant or contract.

I am unaware of any grant received by Westlands Water District related to the subject matter of this hearing in the current or previous two calendar years. Westlands does have an interim renewal water service contract with the United States for the delivery of water from the Central Valley Project.

3. Please list any contracts or payments originating with a foreign government related to the subject matter of the hearing that were received in the current year and previous two calendar years by you or the organization(s) you represent at this hearing, including the amount and country of origin of each contract or payment. – None.

**From:** Wong, Bryson  
**Sent:** Monday, February 22, 2016 10:16 AM  
**To:** 'Tom Birmingham'  
**CC:** Semanko, Alex; 'Bernhardt, David L.'; 'Johnny Amaral'  
**Subject:** RE: Invitation to Testify at Sub on WPO Ov Hrg 02.24.16

Thanks, Tom.

---

**From:** Tom Birmingham [mailto:[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)]  
**Sent:** Monday, February 22, 2016 1:34 AM  
**To:** Wong, Bryson  
**Cc:** Semanko, Alex; 'Bernhardt, David L.'; 'Johnny Amaral'  
**Subject:** RE: Invitation to Testify at Sub on WPO Ov Hrg 02.24.16

Bryson,

Attached are my written testimony and disclosure form for the February 24, 2016, hearing. I look forward to seeing you then.

Thank you,  
Tom

---

**From:** Semanko, Alex [mailto:[Alex.Semanko@mail.house.gov](mailto:Alex.Semanko@mail.house.gov)]  
**Sent:** Tuesday, February 16, 2016 10:30 AM  
**To:** 'tbirmingham@westlandswater.org' <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>  
**Cc:** Wong, Bryson <[Bryson.Wong@mail.house.gov](mailto:Bryson.Wong@mail.house.gov)>  
**Subject:** Invitation to Testify at Sub on WPO Ov Hrg 02.24.16

Good afternoon Mr. Birmingham,

Attached is an invitation to testify before the House Subcommittee on Water, Power and Oceans oversight hearing, *"The 2016 California Water Supply Outlook During the El Niño and Three Years of Restricted Water Deliveries."*

This hearing will be held on **Wednesday, February 24, 2016 at 10:00 a.m. in room 1324 Longworth House Office Building**. Please note that the '114th testimony & disclosure requirements' document (attached) states that all materials must be received by the Committee at least 48 hours before the day of the hearing. Please forward the electronic copy of the testimony and the disclosure form in Word format, to Bryson Wong, at [Bryson.wong@mail.house.gov](mailto:Bryson.wong@mail.house.gov).

Please reply to this email to confirm receipt of invitation.

Should you have any questions or need additional information, please feel free to contact Bryson Wong, Majority staff of the Subcommittee on Water, Power and Oceans with any questions, at [\(202\) 225-8331](tel:202-225-8331).

**Alex Semanko**

Clerk  
Subcommittee on Water, Power and Oceans  
House Committee on Natural Resources  
1522 Longworth House Office Building  
Washington, DC 20515



(202) 225-8331 main

(202) [REDACTED]-[REDACTED] direct

(202) 226-6953 fax

**From:** Weaver, Kiel  
**Sent:** Wednesday, February 24, 2016 2:05 PM  
**To:** Birmingham, Thomas (tbirmingham@westlandswater.org); Johnny Amaral; David Bernhardt  
**Subject:** FW: Flint Michigan of The San Joaquin Valley

Sound familiar?

---

**From:** Daniel, Elise  
**Sent:** Wednesday, February 24, 2016 2:32 PM  
**To:** Daniel, Elise  
**Subject:** Flint Michigan of The San Joaquin Valley



**FOR IMMEDIATE RELEASE**  
Wednesday, February 24, 2016

**CONTACT:** [Elise Daniel](#)  
202-226-9019

**Flint Michigan of The San Joaquin Valley**  
*Government Failures Worsen Drought in the Face of El Niño*

**Washington, D.C.** – Today, the Subcommittee on Water, Power,

and Oceans held a hearing to review federal regulations exacerbating California's drought crisis even while El Niño is providing significant precipitation for the region.

*"I've watched what's happening in [Flint, Michigan](#) and the outrage with the government action that put the population of Flint at risk," stated **Tom Birmingham, General Manager, Westlands Water District**. "Where's the outrage with governmental policies that have created zero water supplies for communities in the San Joaquin Valley?"*

Panelists highlighted the problem of water restrictions, intended to protect the Delta smelt fish, resulting in 162 billion gallons diverted this year to protect the fish. These policies have proven futile as the Delta smelt numbers continue to decline.

*"It is beyond reasonable dispute that the continued, prolonged water supply shortages being suffered in the San Joaquin Valley are the result of policy choices made by the federal government, not by hydrologic conditions,"* **Birmingham added**. *"As a consequence, it is unlikely that the current El Niño conditions will produce any water supply benefits."*

The hearing highlighted the need for legislative solutions to increase water storage capacity, allowing reservoirs to capture water during the rainy season to help [mitigate future drought](#).

**Rep. Tom McClintock (R-CA)** questioned the panel about how much water could have been captured if the House-passed [Western Water and American Food Security Act](#) was signed into law. At least "200,000 acre feet of that water," serving "400,000 households of 4 people," **Birmingham responded**.

**Rep. Doug LaMalfa (R-CA)** [questioned](#) the panel about the modeling and fish mortality data Federal agencies are using. Answers revealed that agencies rely on flawed data to make water flow decisions that ultimately results in shortages to water users.

**Rep. Jeff Dehman (R-CA)** [reiterated](#) the harmful impact of drought to California's economy. *"This administration continues to talk about environmental and social justice. Where's the justice [in] 50% unemployment?"*



*"Will a three-inch fish continue to be more important than people? So far, that answer is yes,"* **stated Subcommittee Chairman John Fleming (R-LA)** **stated.**

Click [here](#) to view the full witness testimony and [here](#) to learn more about the *Western Water and American Food Security Act*

###

**From:** Rojewski, Cole

**Sent:** Wednesday, February 24, 2016 5:28 PM

**To:** Johnny Amaral; Tom Birmingham; David L. Bernhardt

**Subject:** Fwd: Interior Department Debunks Feinstein's Claim Senate Bill Increases Pumping

Begin forwarded message:

**From:** "Anna R. Vetter" <[anna.vetter@mail.house.gov](mailto:anna.vetter@mail.house.gov)>

**Date:** February 24, 2016 at 7:10:58 PM EST

**To:** <[Cole.Rojewski@mail.house.gov](mailto:Cole.Rojewski@mail.house.gov)>

**Subject:** Interior Department Debunks Feinstein's Claim Senate Bill Increases Pumping

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**FOR IMMEDIATE RELEASE**

Wednesday, February 24, 2016

Contact: [Anna R. Vetter](#)

202.815.1685

## **U.S. Department of the Interior Debunks Feinstein's Claim Senate Bill Increases Pumping**

WASHINGTON - On Wednesday, February 24, 2016, the U.S. House Committee on Natural Resources Subcommittee on Water, Power, and Oceans held a hearing to review federal regulations exacerbating California's drought crisis despite the fact that El Niño is providing significant precipitation in the region.

The hearing focused on the continuing drought in California, its impacts on both a state and national scale, and Congressional action that could provide a solution while alleviating current suffering. One specific solution discussed was legislation introduced by U.S. Congressman David G. Valadao, H.R.

2898, the *Western Water and American Food Security Act of 2015*.

Members of the Subcommittee asked General Manager of the Westlands Water District, Mr. Tom Birmingham, what impact the Valadao Bill would have made on the current situation had it been enacted in 2015. Mr. Birmingham responded saying, **“If that bill had been enacted, of the 500 thousand acre feet of water that was lost compared to the water rights decision 1641, we would have been able to capture at least 200 acre feet of that water.”**

In contrast, when Members asked Mr. David Murillo, Regional Director of the U.S. Bureau of Reclamation, what operational changes would have been made in 2016 should Senator Feinstein’s drought legislation been enacted, Mr. Murillo stated, “It probably wouldn’t change our operations.” **“It probably wouldn’t change our operations.”**



[Watch](#) the remarks by clicking on the button above. You can also watch the entire House Natural Resources Committee hearing [here](#).

H.R. 2898, the *Western Water and American Food Security Act* was passed by the United States House of Representatives on Thursday, July 16, 2015 by a vote of 245 - 176. Despite bipartisan support in the House, California Senators Boxer and Feinstein refuse to consider the legislation in the Senate.

More information about the *Western Water and American Food Security Act* can be found [here](#).

*Congressman David G. Valadao represents the 21<sup>st</sup> Congressional District, which includes Kings County and portions of Fresno, Tulare, and Kern Counties.*

###

CONNECT:



NOTE: Please DO NOT respond to this email as this inbox is unattended. To contact my office please [click here](#)

**WASHINGTON, DC OFFICE**

1004 Longworth HOB  
Washington, DC 20515  
Phone: (202) 225-4695

**HANFORD OFFICE**

101 North Irwin Street, Suite 110B  
Hanford, CA 93230  
Phone: (559) 582-5526

**BAKERSFIELD OFFICE**

2700 M Street, Suite #250B  
Bakersfield, CA 93301  
Phone: (661) 865-7736

[Update Subscription Options](#) | [Privacy Policy](#) | [Contact David](#)

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[Click Here](#) to be removed from this list

**From:** Nelson, Damon

**Sent:** Thursday, February 25, 2016 3:05 PM

**To:** David Bernhardt (dbernhardt@bhfs.com); Johnny Amaral (jamaral@westlandswater.org); tbirmingham@westlandswater.org

**Subject:** Thank you.

It was great to see everyone last night. I can't say I miss water policy, but I do miss the people. Johnny it meant a lot to me when you congratulated me on the new position. I couldn't have done it without your years of tutelage. Thank you.

-----  
Damon Nelson  
Staff Director  
Chairman Devin Nunes  
House Permanent Select Committee on Intelligence  
(202) 225-4121

**Our Mission:** To protect the American people by providing oversight, direction and resources to enable effective, efficient and constitutional intelligence activities.

**From:** Tom Birmingham  
**Sent:** Tuesday, March 1, 2016 3:36 PM  
**To:** 'Bina, Betsy'  
**CC:** 'Bernhardt, David L.'  
**Subject:** RE: Meeting Request

Betsy,

Thank you for reaching out to us. I am not sure when I will next be in DC, but I will make sure we get on your calendar on our next trip.

Tom

---

**From:** Bina, Betsy [mailto:Betsy.Bina@mail.house.gov]  
**Sent:** Friday, February 26, 2016 2:45 PM  
**To:** 'Tom Birmingham ' <tbirmingham@westlandswater.org>  
**Subject:** Meeting Request

Hello Tom. How are things with you? I've been praying for rain and reasonable political decisions. ☺

Would you be able to meet with me and my colleagues the next time you are in DC. I think they would benefit from knowing you. The Committee's hearing schedule is jam-packed this year. So it's possible that we may not be able to meet on your next trip. But please let me know when you are available.

Many thanks,  
Betsy

Betsy Bina  
House Interior Appropriations Subcommittee  
B-308 Rayburn House Office Building  
Washington, D.C. 20002  
202-225-3081



**From:** Johnny Amaral

**Sent:** Monday, March 7, 2016 8:01 AM

**To:** David Bernhardt; Ryan A. ' 'Smith; Denny Rehberg; Dennis Cardoza; Catherine Karen; Ed Manning; Carolyn Jensen; Mike Burns

**Subject:** No calls today

I have a meeting at 8:30 am PST that's going to go long. Sorry for the short notice

Best,

Johnny Amaral

**From:** Bernhardt, David L.  
**Sent:** Monday, March 7, 2016 8:17 AM  
**To:** Johnny Amaral  
**Subject:** Re: No calls today

Thx

David Bernhardt

> On Mar 7, 2016, at 10:00 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:  
>  
>  
> I have a meeting at 8:30 am PST that's going to go long. Sorry for the short notice  
>  
> Best,  
>  
> Johnny Amaral  
>  
>

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**From:** Petersen, Scott

**Sent:** Wednesday, March 9, 2016 11:41 AM

**To:** tbirmingham@westlandswater.org; John Watts (john\_watts@feinstein.senate.gov)

**CC:** David Bernhardt

**Subject:** QFR re: Murillo testimony on DF bill

**Importance:** High

John and Tom, please see the following question directed to you, Tom, regarding Director Murillo's testimony on water supply and S.2533.

Please feel free to revise as you wish. The deadline for submittal is 5 pm ET today.

1. During the February 24, 2016, hearing, Rep. Jeff Denham asked Director David Murillo whether Senator Feinstein's recently introduced S. 2533 would bring about changes to Reclamation's operations in the Delta this year if it were enacted. Director Murillo responded that the bill probably would not change Reclamation's operations this year in view of the language in S. 2533 stating that 'the Secretary shall continue to comply with all applicable environmental laws.' Based on your analysis of the legislation, what, if any, increase in water supplies would have been available in this year if S.2533 were current law?

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

**From:** Tom Birmingham  
**Sent:** Wednesday, March 9, 2016 4:46 PM  
**To:** 'Petersen, Scott'  
**Subject:** RE: QFR re: Murillo testimony on DF bill  
**Attachments:** Response to Costa Question.docx

Scott,

Attached is a draft response. Please provide any suggested edits.

Tom

---

**From:** Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]  
**Sent:** Wednesday, March 9, 2016 10:41 AM  
**To:** tbirmingham@westlandswater.org; John Watts (john\_watts@feinstein.senate.gov) <john\_watts@feinstein.senate.gov>  
**Cc:** David Bernhardt <dbernhardt@bhfs.com>  
**Subject:** QFR re: Murillo testimony on DF bill  
**Importance:** High

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---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff  
Rep. Jim Costa (CA-16)  
1314 Longworth House Office Building  
Washington, DC 20515  
(202) 225-3341

March 9, 2016

The Honorable Jim Costa  
United States Representative  
1314 Longworth HOB  
Washington, DC 20515

RE: Supplemental Testimony

Dear Mr. Costa:

In follow up to my testimony before the House Subcommittee on Water, Power, and Oceans on February 24, 2016, you requested that I respond to the following question:

During the February 24, 2016, hearing, Rep. Jeff Denham asked Director David Murillo whether Senator Feinstein's recently introduced S. 2533 would bring about changes to Reclamation's operations in the Delta this year if it were enacted. Director Murillo responded that the bill probably would not change Reclamation's operations this year in view of the language in S. 2533 stating that 'the Secretary shall continue to comply with all applicable environmental laws.' Based on your analysis of the legislation, what, if any, increase in water supplies would have been available in this year if S.2533 were current law?

I cannot say with certainty what increase in water supplies would have been available on February 24 if S.2533 were law, but the increase could have been up to approximately 200,000 acre-feet compared to actual operations for the period between January 1, 2016 and February 24, 2016, the period on which much of my testimony was based. The basis for my answer is as follows:

During the period January 1, 2016 through February 24, 2016, operations of the William C. "Bill" Jones Pumping Plant and the Harvey O. Banks Pumping Plant were severely constrained under the 2008 biological opinion for Delta smelt. (During my testimony, I related that operations under the biological opinion had reduced pumping by approximately 500,000 acre-feet, compared to operations under Water Rights Decision 1641.) I am informed that during that period, the rates of pumping were being limited to achieve a reverse flow rates in Old and Middle Rivers significantly below the maximum reverse flow rate allowed under the biological opinion in order to avoid any incidental take of Delta smelt.

Had S.2533 been the law during this period, it would have required that reverse flow in Old and Middle Rivers be managed under the biological opinion "to maximize water supplies for the Central Valley Project and State Water Project," (S. 2533 section 301(e)(3)) subject to not causing "additional adverse effects on the listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion, using the best scientific and commercial data available." (S.2533 section 301(e)(1).)

The 2008 biological opinion for Delta smelt includes an incidental take statement, which is an estimate of anticipated take that will occur if operations of the Delta pumping plants are consistent with the “reasonable and prudent alternative” prescribed by the biological opinion. In other words, if the Delta pumping plants are operated consistent with the “reasonable and prudent alternative,” the 2008 biological opinion anticipates that there will be incidental take of Delta smelt up to the calculated incidental take level.

Operations of the Delta pumping plants intended to avoid *any* incidental take of Delta smelt would be inconsistent with the S.2533’s direction to manage reverse flow “to maximize water supplies for the Central Valley Project and State Water Project” subject to not causing “additional adverse effects on the listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion” because the incidental take of Delta smelt was an “adverse effect[]” anticipated by the biological opinion. Given the distribution of the Delta smelt population, in the western and northern Delta, during the period from January 1 through February 24, it is unlikely that had the Delta pumping plants been operated to manage reverse flow in Old and Middle Rivers at the maximum rate permissible under the reasonable and prudent alternative, there would have been “additional adverse effects on the listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion.” These pumping rates would have been consistent with the direction in S.2533 to manage reverse flow “to maximize water supplies for the Central Valley Project and State Water Project,” and the projects would have been able to divert an additional 200,000 acre-feet of water.

I hope this answers the question posed. If I can provide additional information, please contact me at your convenience.

Very truly yours,

Thomas W. Birmingham  
General Manger

**From:** Petersen, Scott  
**Sent:** Wednesday, March 9, 2016 4:49 PM  
**To:** Tom Birmingham  
**Subject:** RE: QFR re: Murillo testimony on DF bill

I'm sorry that I wasn't more clear, Tom. The question itself was due to the Committee for submittal by today at 5 pm ET, not your response. The Committee will request your response on a different time frame, which I do not know at this time, but is generally two weeks. Let me review the response with Jim and with Senator Feinstein's staff, but at first glance, I think this works very well.

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff  
Rep. Jim Costa (CA-16)

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Wednesday, March 09, 2016 3:46 PM  
**To:** Petersen, Scott  
**Subject:** RE: QFR re: Murillo testimony on DF bill

Scott,

Attached is a draft response. Please provide any suggested edits.

Tom

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**From:** Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]  
**Sent:** Wednesday, March 9, 2016 10:41 AM  
**To:** tbirmingham@westlandswater.org; John Watts (john\_watts@feinstein.senate.gov) <john\_watts@feinstein.senate.gov>  
**Cc:** David Bernhardt <dbernhardt@bhfs.com>  
**Subject:** QFR re: Murillo testimony on DF bill  
**Importance:** High

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---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341



**From:** Bina, Betsy  
**Sent:** Thursday, March 10, 2016 9:33 AM  
**To:** 'Tom Birmingham'  
**CC:** 'Bernhardt, David L.'  
**Subject:** RE: Meeting Request

That would be great. Thank you Tom!

---

**From:** Tom Birmingham [mailto:[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)]  
**Sent:** Tuesday, March 01, 2016 5:36 PM  
**To:** Bina, Betsy <[Betsy.Bina@mail.house.gov](mailto:Betsy.Bina@mail.house.gov)>  
**Cc:** 'Bernhardt, David L.' <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>  
**Subject:** RE: Meeting Request

Betsy,

Thank you for reaching out to us. I am not sure when I will next be in DC, but I will make sure we get on your calendar on our next trip.

Tom

---

**From:** Bina, Betsy [<mailto:Betsy.Bina@mail.house.gov>]  
**Sent:** Friday, February 26, 2016 2:45 PM  
**To:** 'Tom Birmingham ' <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>  
**Subject:** Meeting Request

Hello Tom. How are things with you? I've been praying for rain and reasonable political decisions. ☺

Would you be able to meet with me and my colleagues the next time you are in DC. I think they would benefit from knowing you. The Committee's hearing schedule is jam-packed this year. So it's possible that we may not be able to meet on your next trip. But please let me know when you are available.

Many thanks,  
Betsy

Betsy Bina  
House Interior Appropriations Subcommittee  
B-308 Rayburn House Office Building  
Washington, D.C. 20002  
202-225-3081

**From:** Johnny Amaral

**Sent:** Thursday, March 10, 2016 9:32 PM

**To:** David Bernhardt; Ryan A. ' 'Smith; Denny Rehberg; Dennis Cardoza; Catherine Karen

**Subject:** No pre-call tomorrow

Best,

Johnny Amaral

**From:** Tom Birmingham

**Sent:** Thursday, March 17, 2016 11:44 AM

**To:** 'Watts, John (Feinstein)'; 'Rooney, Kenneth (Feinstein)'; 'Petersen, Scott'; 'Lombardi, Kyle'; 'Rojewski, Cole'; Caitlin.Shannon@mail.house.gov

**CC:** 'Abajian, Shelly (Feinstein)'; 'Johnny Amaral'; 'David Bernhardt'; 'Denny Rehberg'; 'Dennis Cardoza'

**Subject:** FW: SWC and SL&DMWA Recommendations for the week of March 14, 2016.

Lady and Gentlemen:

The following is a response from David Murillo to Jason Peltier, the Executive Director of the San Luis & Delta-Mendota Water Authority, and Terry Erlewine, the General Manager of the State Water Contractors, regarding a proposed operation in light of the significant precipitation events during the first part of this month. David's response, which merely relates the fishery agencies' response, speaks for itself.

However, to put this response in context, please consider Delta inflow for a mere three days this week, March 14, March 15, and March 16. On those three days, the Bureau of Reclamation's preliminary calculations of Delta inflow were 117, 846 cfs, 145,007 cfs, and 150,807 cfs, respectively. That means over a three day period, Delta inflow was in excess of 826,906 acre-feet. That three day inflow is more than the Jones Pumping Plant pumped during the entire 2015 water year (695,655 acre-feet).

The fishery agencies maintain that under existing law they do not have the discretion to permit the operations proposed by the Authority and the State Water Contractors. That is precisely why we need immediate action on legislation; to give the agencies the discretion they assert they do not have.

Tom

**From:** Murillo, David [<mailto:dmurillo@usbr.gov>]

**Sent:** Thursday, March 17, 2016 8:53 AM

**To:** Terry Erlewine <[TERlewine@swc.org](mailto:TERlewine@swc.org)>; [jpeltier@westlandswater.org](mailto:jpeltier@westlandswater.org)

**Cc:** [mcowin@water.ca.gov](mailto:mcowin@water.ca.gov); ([Ren\\_Lohoefener@fws.gov](mailto:Ren_Lohoefener@fws.gov)) <[Ren\\_Lohoefener@fws.gov](mailto:Ren_Lohoefener@fws.gov)>; Torgersen, Carl@DWR <[Carl.Torgersen@water.ca.gov](mailto:Carl.Torgersen@water.ca.gov)>; [leahigh@water.ca.gov](mailto:leahigh@water.ca.gov); [RMILLIGAN@usbr.gov](mailto:RMILLIGAN@usbr.gov); Castleberry, Dan@fws <[Dan\\_Castleberry@fws.gov](mailto:Dan_Castleberry@fws.gov)>; Ara Azhderian <[ara.azhderian@sldmwa.org](mailto:ara.azhderian@sldmwa.org)>; Brent Walthall <[bwalthall@kcwa.com](mailto:bwalthall@kcwa.com)>; [sarakawa@mwdh2o.com](mailto:sarakawa@mwdh2o.com)

**Subject:** Re: SWC and SL&DMWA Recommendations for the week of March 14, 2016.

Terry/Jason, Based on discussions with FWS and NMFS, we will not be able to implement this recommendation. Both FWS and NMFS have stated that the RPA requirements in the their BOs do not allow them the discretion to permit -6,000 OMR as the overall target at this time. From their perspective, concerns regarding juvenile winter-run salmon and juvenile delta smelt remain elevated. Reinitiation of formal consultation with NMFS and FWS to request changes to the RPA requirements would be required to make any change and both agencies have indicated it would be unlikely that they would be able to allow this type of a change given the status of the species.

*Thanks*

*David G. Murillo*

*Bureau Of Reclamation*

*Mid Pacific Regional Director*

*Office # [916-978-5000](tel:916-978-5000)*

On Mon, Mar 14, 2016 at 2:26 PM, Terry Erlewine <[TErlewine@swc.org](mailto:TErlewine@swc.org)> wrote:

Messers Cowin, Murillo, Loehefner, Castleberry, Milligan, Torgersen and Lehigh:

For the week of March 14, 2016 the State Water Contractors and the San Luis & Delta-Mendota Water Authority recommend that pumping at the Banks and Jones pumping plants be maintained at levels that result in an OMR flowrate of -6,000 cfs based on the indexed value. The exceptionally large flows now occurring require immediate action to increase pumping. Our review and analysis of current monitoring data described below supports this recommendation.

### **Smelt**

1. Salvage of zero Delta smelt during the past 21 days at the pumps. Smelt have not been captured at Jersey Point or Prisoners Point in 120 Trawls since February 25<sup>th</sup>.
2. Zero Delta smelt have been captured in 150 trawls at station 902 in the south Delta
3. Recent increases in inflow have not increased turbidity within the South Delta. Holland Cut and Old River at Bacon Island remain below 8, significantly below levels of concern for adult, spawning Delta smelt.
4. Delta Smelt distributions during the spawning period to date remain in the Northern Arc between Cache Slough and Suisun Bay, keeping the likelihood of larval entrainment very low and reducing the need of larval protective measures during this week. Increasing flows on the San Joaquin River and dramatic increases in QWEST also reduce the likelihood of entrainment

into the South Delta caused by an increase in pumping to -6,000. The larval survey has yet to capture any Delta smelt at any station.

### **Salmon**

1. Salvage of just 0 wild winter run since February 22, and just two hatchery winter run in the past 8 days.
2. Wild non-clipped is at 1.1% of ITL. Hatchery/clipped is at 0.6% of ITL
3. Prior salvage events were minor and mainly limited to specific hatchery releases. Those fish have likely exited the system.
4. Monitoring indicates that out-migrants are in the Sacramento and San Joaquin rivers. And very limited number of individuals in the South Delta (see attached map).
5. Recent scientific findings supported by your agencies show that is “little or no effect of exports on SJR and Sac R flow or velocity”
6. The NMFS analysis of OMR and salmon salvage provides no indication that -5,000 cfs OMR is more protective than a more negative OMR.

Based on the methodology used to develop the salmon RPAs and the associated ITLs we think the RPAs provide sufficient latitude to increase pumping to -6,000 cfs. In January and February the your agencies decreased pumping due to take that was significantly below allowable levels in reliance on the agencies view that the BiOps are flexible and exercised that flexibility to reduce pumping. Under the current conditions in the Delta the agencies should exercise the same flexibility to increase pumping unless salmonid take increases. If increased pumping under the BiOps requires an exchange of letters between the regulatory agencies and the action agencies that exchange should be expedited to allow capture of the current high flows. We agree that continued close monitoring of the salmon ITLs (particularly the Spring Run surrogate ITL) is warranted and that additional salvage may necessitate reducing pumping back to -5,000 if those ITLs are met.

The transfer window was extended last year and should be extended again this year. The agencies should expedite the process of approving a 1:1 ratio for transfer water from the San Joaquin River with an extension of the transfer window until mid-November.

Based on our analysis of the above data combined with forecasted conditions we recommend that pumping be set at levels that achieve a -6,000 cfs OMR until such time as there is significant and sustained increases in turbidity, or increased salmonid salvage unassociated with hatchery releases.

Thank you,

Terry Erlewine

Jason Peltier

General Manager

General Manager

State Water Contractors

San Luis & Delta-Mendota Water Authority

**From:** Rojewski, Cole  
**Sent:** Thursday, March 17, 2016 2:02 PM  
**To:** Johnny Amaral; David L. Bernhardt  
**Subject:** Settlement

Northern agreement settled yet? Any word on letter from interior?

Cole

**From:** Johnny Amaral  
**Sent:** Thursday, March 17, 2016 2:19 PM  
**To:** 'Rojewski, Cole'; 'David L. Bernhardt'  
**Subject:** RE: Settlement

Northerly settlement agreed to. Waiting on Interior letter still

-----Original Message-----

From: Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
Sent: Thursday, March 17, 2016 2:02 PM  
To: Johnny Amaral; David L. Bernhardt  
Subject: Settlement

Northern agreement settled yet? Any word on letter from interior?

Cole



**From:** Bernhardt, David L.  
**Sent:** Thursday, March 17, 2016 2:20 PM  
**To:** 'Rojewski, Cole'; Johnny Amaral  
**Subject:** RE: Settlement

It's my understanding they have reached an agreement, but the Government has not finalized. I think we will get the letter very soon.

David

-----Original Message-----

From: Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
Sent: Thursday, March 17, 2016 5:02 PM  
To: Johnny Amaral; Bernhardt, David L.  
Subject: Settlement

Northern agreement settled yet? Any word on letter from interior?

Cole

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**From:** Rojewski, Cole  
**Sent:** Thursday, March 17, 2016 2:21 PM  
**To:** Bernhardt, David L.  
**CC:** Johnny Amaral  
**Subject:** Re: Settlement

House thinks it's possible to do hearing in April if possible.

> On Mar 17, 2016, at 5:19 PM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

>

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> David

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> Sent: Thursday, March 17, 2016 5:02 PM

> To: Johnny Amaral; Bernhardt, David L.

> Subject: Settlement

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**From:** Bernhardt, David L.  
**Sent:** Thursday, March 17, 2016 2:24 PM  
**To:** Rojewski, Cole  
**CC:** Johnny Amaral  
**Subject:** Re: Settlement

We would like to see that happen.

David Bernhardt

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**From:** Rojewski, Cole  
**Sent:** Sunday, March 20, 2016 8:54 AM  
**To:** 'Bernhardt, David L.'  
**CC:** Johnny Amaral  
**Subject:** RE: Settlement

Committee seems to be hearing that gov will be finalizing settlement soon. Let's touch base middle of next week and figure things out.

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From: Bernhardt, David L. [<mailto:DBernhardt@BHFS.com>]  
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Cc: Johnny Amaral  
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>> To: Johnny Amaral; Bernhardt, David L.

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**From:** Bernhardt, David L.  
**Sent:** Sunday, March 20, 2016 8:55 AM  
**To:** 'Rojewski, Cole'  
**CC:** Johnny Amaral  
**Subject:** RE: Settlement

Cole: It is very close to done, but the paperwork on the Government's side takes a while. We can certainly touch base next week.

David

-----Original Message-----

From: Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
Sent: Sunday, March 20, 2016 11:54 AM  
To: Bernhardt, David L.  
Cc: Johnny Amaral  
Subject: RE: Settlement

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**From:** Johnny Amaral

**Sent:** Monday, March 28, 2016 8:33 AM

**To:** Mike Burns; Ed Manning; Carolyn Jensen; Dennis Cardoza; Ryan A. ' 'Smith; Denny Rehberg; David Bernhardt; Catherine Karen

**Subject:** Surprise surprise

I just got pulled into a Landholder Comittee meeting in the office. No call today.

Mike Burns...I will call you later today when this is all over.

Best,

Johnny Amaral

**From:** Karen Clark

**Sent:** Friday, April 1, 2016 10:42 AM

**To:** 'Alison MacLeod'; 'Carmela McHenry'; 'Carolyn Jensen'; Catherine Karen; Dan Pope; 'David Bernhardt'; Dennis Cardoza; Denny Rehberg; 'Ed Manning'; Emily Lynn Smith; 'Gayle Holman'; Jennifer Walsh; Johnny Amaral; 'Mike Burns'; Pamela Russell; Sheila Greene; 'Susan Ramos'

**Subject:** Statement of Westlands Water District on Reclamation's Allocation



## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

### **PRESS RELEASE**

April 1, 2016

**For Immediate  
Release**

**Contact:** Gayle  
Holman

(559) 905-6736  
Westlands Water  
District

## **Statement of Westlands Water District on Bureau of Reclamation's Allocation Announcement**

**FRESNO, CA** - Despite above average runoff into the Sacramento-San Joaquin Rivers Delta and near average snowpack in the northern Sierra Nevada this year, farmers on the westside of the San Joaquin Valley, from Tracy to Kettleman City, will suffer from grossly inadequate water supplies from the Central Valley Project. Although the Bureau of Reclamation's announcement that these farmers will receive a 5% allocation is certainly better than zero allocation they received in 2014 and 2015, today's allocation announcement clearly illustrates the degree to which the once-lauded Central Valley Project is broken.

It may be difficult for some people to understand how, in a year in which north-of-Delta Central Valley Project agricultural water service contractors receive a 100% allocation, south-of-Delta agricultural water service contractors receive only 5%. The north-of-Delta contractors are not more "senior" than south-of-Delta contractors. And the State Water Resources Control Board and federal courts have both held that area of origin laws do not give north-of-Delta contractors any priority over contractors in the Central Valley Project export service area. The discrepancy between the allocations for these two groups of contractors is simply the result of constraints imposed on the Project's Delta operations by the 2008 Delta smelt biological opinion and the 2009 salmonid biological opinion.

Since December 2015, more than 8 million acre-feet of water has flowed into the Delta, while pumping into key south-of-the Delta reservoirs has been severely limited by the 2008 biological opinion for the Delta smelt. Indeed, through January and February of 2016, the Central Valley Project Jones Pumping Plant diverted less water than in January and February of 2015, when extended drought conditions resulted in very little inflow into the Delta.

Notwithstanding Reclamation's ability to make some water available to farmers, it is likely that we will experience another year when more than 200,000 acres of prime farm land in Westlands will be fallowed. This means not only increased costs and a loss of revenue for farmers, but a loss of tens-of-thousands of farm worker and farm related jobs. In other words, despite the significant improvement in rain and snow produced by the 2016 El Nino, economic hardship will continue to plague the people who live and work on the westside of the San Joaquin Valley.

We often hear that in order to make California's water supply system work, we have to implement a "big gulp, little sip" strategy; to take advantage of periods of high flow so that additional water can be left in the Delta during dry periods. But if the first three months of 2016 were not a time when a "big gulp" could be taken, there will not exist such a time. Simply put, the rigidity imposed on operation of the Central Valley Project by the 2008 biological opinion for Delta smelt has failed our communities. But tragically, the current federal policy, which wasted more than 250 billion gallons of water into the ocean in January, February, and March, has failed to protect the species while simultaneously allowing the health of the Delta to rapidly decline.

As people, communities and agriculture try to survive this disaster, we should not forget that these decisions are affecting the consumer. Jobs and farmland will continue to be eliminated and the safest food supply grown in our nation will be compromised as local farming operations are outsourced to foreign soil.

The decisions made today will have lasting impacts on the viability, strength and resilience of our nation's most abundant, safest source of food.

Is that the legacy we want for our future generations?

###

Westlands Water District, 3130 N. Fresno Street, P.O. Box 6056, Fresno, CA 93703-6056

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**From:** Johnny Amaral  
**Sent:** Friday, April 22, 2016 12:40 PM  
**To:** 'Rojewski, Cole'  
**CC:** 'Dunklin, Kristina'; 'Smith, Ryan A.'; David Bernhardt  
**Subject:** RE: Conference call on Monday

We will make Tuesday work. No problem.

Ryan or David, care to chime in here?

---

**From:** Rojewski, Cole [mailto:Cole.Rojewski@mail.house.gov]  
**Sent:** Friday, April 22, 2016 12:28 PM  
**To:** Johnny Amaral  
**Cc:** Dunklin, Kristina  
**Subject:** Re: Conference call on Monday

Let's do it Tuesday. Give us a little time to talk with committee and get things figured out.

Also now we still need the northern settlements....? Any word on them?

On Apr 22, 2016, at 12:11 PM, Johnny Amaral <[jamaral@westlandswater.org](mailto:jamaral@westlandswater.org)> wrote:

Valadao peeps,

Now that you have gotten your response from DoI, can we do a conf call to discuss next steps on Drainage? It would be with me, Ryan Smith, and David Bernhardt and whoever you want to include on your end.

**From:** Dunklin, Kristina  
**Sent:** Tuesday, April 26, 2016 7:25 AM  
**To:** Johnny Amaral; David Bernhardt; Ryan A. ' 'Smith; Rojewski, Cole  
**Subject:** RE: Drainage bill conference call this morning?

Let me know what works for you all. I am around between 10:00-11:30am (Pacific) if that works for all of you.

Kristina Dunklin  
Legislative Director  
Congressman David G. Valadao (CA-21)

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]  
Sent: Tuesday, April 26, 2016 10:20 AM  
To: David Bernhardt; Ryan A. ' 'Smith; Rojewski, Cole; Dunklin, Kristina  
Subject: Drainage bill conference call this morning?

Best,

Johnny Amaral

**From:** Bernhardt, David L.  
**Sent:** Wednesday, April 27, 2016 10:27 AM  
**To:** Cole Rojewski  
**CC:** Johnny Amaral; Smith, Ryan A.  
**Subject:** Fwd: Northerly District/Westlands and US Settlement  
**Attachments:** 031816 Combined Draft Legislation CLEAN corrected 031816 US edits.docx; ATT00001.htm

Cole: Here is the ND district language. You received it March 23.

Best,  
David

---

**From:** Rojewski, Cole [<mailto:Cole.Rojewski@mail.house.gov>]  
**Sent:** Wednesday, March 23, 2016 12:41 PM  
**To:** Smith, Ryan A.  
**Cc:** Dunklin, Kristina  
**Subject:** FW: Northerly District/Westlands and US Settlement

Thanks for sending. Kristina with our office will now be the main contact for the bill.

Thanks,

Cole

---

**From:** Smith, Ryan A. [<mailto:RSmith@BHFS.com>]  
**Sent:** Wednesday, March 23, 2016 10:32 AM  
**To:** Rojewski, Cole  
**Subject:** FW: Northerly District/Westlands and US Settlement

Please use this draft and disregard the previous draft.

---

**From:** Smith, Ryan A.  
**Sent:** Wednesday, March 23, 2016 10:29 AM  
**To:** [cole.rojewski@mail.house.gov](mailto:cole.rojewski@mail.house.gov)  
**Cc:** Bernhardt, David L.  
**Subject:** Northerly District/Westlands and US Settlement

Cole,

Per our discussion, I have attached a negotiators draft of the San Luis Drainage Resolution Act with the completed Northerly Districts Agreement for your review. BOR has not formally approved this yet, but I understand that it is making its way through the approval process as we speak. Therefore, please hold close for now.

There have been some minor tweaks to the language that also appears in your boss's bill, which I do not believe change the legislation substantively. I would like to walk you through those changes and brief you on the settlement. To that end, please let me know if there is a good time that we can come brief you and discuss with you your thoughts on the best way to proceed.

Best,

Ryan

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**REVISIONS 3/18/2016**

**DRAFT LEGISLATION**

**IN THE HOUSE OF REPRESENTATIVES**

\_\_\_\_\_, \_\_, 20\_\_

**A BILL**

To affirm “The Agreement Between the United States and Westlands Water District” dated \_\_\_\_\_, “The Agreement Between the United States, San Luis Water District, Panoche Water District and Pacheco Water District” dated \_\_\_\_\_, and for other purposes.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.*

**SEC. 1. SHORT TITLE.**

This Act may be cited as the “San Luis Unit Drainage Resolution Act.”

**SEC. 2. DEFINITIONS.**

In this Act:

- (a) The term “Northerly Districts Agreement” means the Agreement dated \_\_\_\_\_ between the Secretary and San Luis Water District, Panoche Water District, and Pacheco Water District;
- (b) The term “Northerly San Luis Unit Districts” means San Luis Water District, Panoche Water District, and Pacheco Water District;
- (c) The term “Project” means the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;
- (d) The term “Project Water” means all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;
- (e) The term “San Luis Act” means the Act of June 3, 1960, Public Law No. 86-488 and all Acts amendatory thereof and supplementary thereto;
- (f) The term “San Luis Unit” means those lands identified in section 1 of the Act of June 3, 1960 (Public Law 86-488, 74 Stat. 156);

- (g) As used herein, the term “San Luis Unit Contractors” means Westlands Water District (including Broadview Water District lands annexed within Westlands Water District), San Luis Water District, Panoche Water District, and Pacheco Water District;
- (h) The term “Secretary” means the Secretary of the Interior;
- (i) The term “Westlands Agreement” means the “Agreement between the United States and Westlands Water District August 2015” signed September 15, 2015.
- (j) The term “Contracting Officer” means “Contracting Officer” as that term is defined in existing San Luis Unit water service contracts.
- (k) The term “Condition of Shortage” means “Condition of Shortage” as that term is defined in existing San Luis Unit water service contracts.
- (l) As used herein, the terms “repayment contractor,” “repayment contracts,” “water service contractor,” “water service contracts,” “exchange contractor,” “exchange contracts,” “water rights settlement contractor,” “water rights settlement contracts,” “refuge contractor,” and “refuge contracts” shall have the same meanings respectively as each of those terms has in the Central Valley Project Improvement Act of 1992, Title XXXIV, 106 Stat. 4705.

### **SEC. 3. APPROVAL OF AGREEMENTS.**

Notwithstanding any other provision of law, unless otherwise specified herein, the Secretary is hereby directed to implement the terms and conditions of the Westlands and Northerly Districts Agreements.

### **SEC. 4. RELIEF FROM DRAINAGE OBLIGATION.**

- (a) AMENDMENTS TO THE SAN LUIS UNIT AUTHORIZATION.—The San Luis Act is amended as follows:
  - (1) In the second sentence of section 1(a) strike the words “distribution systems, drains.”
  - (2) In the sixth sentence of Section 1(a), by inserting a period following the phrase “and the terms and conditions of this Act” and striking all that follows.
  - (3) In section 5, by striking the first sentence and inserting “Notwithstanding any other provision of law, the Secretary of the Interior shall have no duty to provide drainage or drainage service to the San Luis Unit. Each contractor within the San Luis Unit that receives water for the purpose of irrigation shall be responsible for the management of drainage water within its boundaries, in accordance with Federal and California law consistent with the Agreement between the United States and Westlands Water District August 2015, signed



September 15, 20015, and Agreement dated \_\_\_\_\_ between the Secretary and San Luis Water District, Panoche Water District, and Pacheco Water District, respectively.”

(4) In the first sentence of Section 8 by striking the words “other than distribution systems and drains.”

(5) In the third sentence of Section 8, strike everything between the word “required” through and including “(b)” inserting a period following the word “unit.” Strike the remainder of the Proviso in Section 8.

## **SEC. 5. DRAINAGE IMPLEMENTATION.**

Upon enactment of this Act, and as provided in the Westlands Agreement and Northerly Districts Agreement, each San Luis Unit Contractor shall assume all legal responsibility for the management of drainage water within its boundaries, in accordance with Federal and California law; *provided* that the Westlands Water District shall not discharge drainage water outside of its boundaries.

## **SEC. 6. WATER DELIVERY CONTRACTS.**

(a) CONTRACT CONVERSION—The Secretary is directed to convert each San Luis Unit Contractor’s existing long-term or interim renewal water service contract entered into under section 9(e) of the Act of August 4, 1939 (53 Stat. 1196), to a repayment contract under sections 9(d) and 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195, 1194), consistent with the Westlands and Northerly Districts Agreements.

(b) Notwithstanding subsection (a) and as provided in the Westlands and Northerly Districts Agreements, the Secretary shall make allocation decisions in the Project consistent with the requirements of all current or future enacted Federal law, including, but not limited to the Federal Endangered Species Act, Reclamation law, and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the Central Valley Project.

(1) Conversion of San Luis Unit Contractors’ contracts in subsection (a) shall not afford any San Luis Unit Contractor a greater or lesser right to an annual allocation of Project Water than that San Luis Unit Contractor had prior to the conversion of its contract under this Act.

(2) If there is a Condition of Shortage in the amount of water available for delivery to the San Luis Unit Contractors because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations no liability shall accrue against the United States or any of its officers, agents or employees for any damage, direct or indirect, arising therefrom.

(c) **WATER SERVICE CONTRACT FOR LEMOORE NAVAL AIR STATION—**

- (1) The Secretary is directed to enter into a contract under section 9(e) of the Act of August 4, 1939 (53 Stat. 1196), with the Secretary of the Navy for the delivery of Project Water, to the Lemoore Naval Air Station to meet the irrigation needs of Lemoore Naval Air Station associated with air operations.
- (2) The contract amount of Project Water made available to the Lemoore Naval Air Station under this 9(e) contract entered into pursuant to paragraph (1) shall be determined by the Secretary through technical analysis with the Lemoore Naval Air Station.
- (3) In any year in which there may occur a Condition of Shortage in the amount of water available for delivery, the Contracting Officer shall allocate the available Project Water to Lemoore Naval Air Station according to the allocation steps for M&I water service contractors under the Central Valley Project M&I Water Shortage Policy (Policy) in its form on the effective date of the contract referenced in paragraph (c)(1) above for determining the amount of Project Water available for delivery to Lemoore Naval Air Station. For purposes of determining “historical use” under the Policy, Reclamation shall consider past water use for irrigation needs by the Lemoore Naval Air Station under the contract authorized by this Section, or such use previous to the contract.

**SEC. 7. REPAYMENT OBLIGATIONS.**

- (a) **SUSPENSION OF CAPITAL OBLIGATION—**Upon enactment of this Act, Westlands Water District’s capital repayment obligation and payments under its existing water service contracts and the April 1, 1965, repayment contract between the United States and Westlands Water District (contract numbered 14-06-200-2020-A) as further defined in subsection (d), shall be suspended until the execution of the 9(d) repayment contract referenced in section 6, and upon execution of the 9(d) repayment contract, Westlands Water District shall receive a credit against future operation and maintenance costs payable to the United States in the amount of the capital costs under the existing water service contracts and the 1965 Repayment Contract paid by Westlands between the date of the Westlands Agreement and the date of enactment of this Act.
- (b) Upon enactment of this Act, each Northerly San Luis Unit District’s capital repayment obligation and payments under its existing water service contract shall be suspended until the execution of the respective 9(d) repayment contract referenced in section 6, and upon execution of the 9(d) repayment contract, each Northerly San Luis Unit District shall receive a credit against future operation and maintenance costs payable to the United States in the amount of the capital costs under the existing water service contracts paid by that Northerly San Luis Unit District between the date of the Northerly Districts Agreements and the date of enactment of this Act.

- (c) Costs incurred by the United States for purposes of re-evaluating, planning, or providing drainage service to the San Luis Unit Contractors shall be non-reimbursable as set forth in paragraphs 9(c)(iv) and XXXXXX of the Westlands Agreement and Northerly Districts Agreement.

(d) RELIEF OF CAPITAL REPAYMENT OBLIGATIONS—

(1) Upon the date of execution of the 9(d) repayment contracts referenced in section 6(a), and as set forth in the Westlands Agreement:

(A) Westlands Water District shall be relieved of its capital repayment obligations under the June 5, 1963, water service contract between the United States and Westlands Water District (contract number 14-06-200-495-A) providing for water service, or any renewals thereof, and any water service contracts assigned to Westlands, Westlands Distribution District No. 1, and Westlands Distribution District No. 2 existing as of the date of execution of the Westlands Agreement.

(B) Westlands Water District shall be relieved of any remaining repayment obligation under the April 1, 1965, repayment contract between the United States and Westlands Water District (contract numbered 14-06-200-2020-A).

(2) Upon the date of execution of the 9(d) repayment contracts referenced in section 6(a) and as set for in the Northerly Districts Agreement, each of the Northerly San Luis Unit Districts shall be relieved of its capital repayment obligations under its long-term or interim renewal water service contracts or any renewals or conversions thereof (Panoche Water District, contract number 14-06-200-7864A-IR4; Pacheco Water District, contract number 6-07-20-W0469; and San Luis Water District, contract number 14-06-200-7773A-IR4) existing as of the date of execution of the Northerly Districts Agreements.

(3) Repayment relief granted in paragraphs b(1) and b(2) above shall not extend to the San Luis Unit Contractors' operation and maintenance obligations, whether payable to the United States or to an operating non-federal entity, or to construction costs or other capitalized costs not yet allocated to or incurred by the San Luis Unit Contractors as of the date of the Westlands Agreement or Northerly Districts Agreement, respectively, including, but not limited to, costs attributable to the Folsom Safety of Dams modifications or the B.F. Sisk corrective action study or any Safety of Dams, or to the repayment of future capital costs incurred after the date of execution of the Westlands or Northerly Districts Agreements;

(4) Central Valley Project construction costs or other capitalized costs allocated to Westlands Water District after the date of the Westlands Agreement, and properly assignable to Westlands Water District, shall be repaid in not more than 5 years after notification of the allocation of such amount of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable Reclamation law. Central Valley Project construction costs or other capitalized costs allocated to any of the Northerly San Luis Unit Districts after the date of the Northerly District Agreement shall be repaid as provided by applicable Reclamation law. Any additional costs that may have been assigned to the San Luis

Unit Contractors pursuant to paragraph 9(c)(iv) of the Westlands Agreement and paragraph XXXX of the Northerly Districts Agreement respectively, related to the Central Valley Project final cost allocation shall be non-reimbursable.

(e) APPLICABILITY OF CERTAIN PROVISIONS—

(1) RECLAMATION REFORM ACT— Upon discharge of the capital repayment obligation as provided in subsection (b), the provisions of section 213(a) and (b) of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall be deemed to apply to lands in Westlands Water District and the Northerly San Luis Unit Districts, and the ownership and full cost pricing limitations in any provision of Federal reclamation law shall not apply to lands in these Districts notwithstanding the subsequent allocation of construction costs or other capitalized costs to the Districts. These exemptions shall be carried out in accordance with the process set forth in the Westlands Agreement and Northerly Districts Agreement.

(2) OTHER PROVISIONS—Nothing in this Act is intended to relieve the San Luis Unit Contractors of any other obligations under Reclamation Law including Restoration Fund charges pursuant to section 3407(d) of Public Law 102-575.

(3) The Secretary is authorized to provide financial assistance as specified in paragraph [XX] of the Northerly District Agreement. \$70 million in funds expended by the Secretary pursuant to the Northerly Districts Agreement shall be non-reimbursable.

**SEC. 8. TRANSFER OF TITLE TO CERTAIN FACILITIES.**

(a) IN GENERAL.—Upon the execution of the section 9(d) repayment contract, or as soon thereafter as practicable, the Secretary shall transfer to Westlands Water District title to:

(1) San Luis Canal System, excluding the main canal which is integrated with the California Aqueduct. These appurtenant features include:

- a. Internal water distribution system within Westlands, including:
  - i. Approximately 1,045 miles of buried pipeline.
- b. Pumping plants within Westlands, including:
  - i. San Luis Canal Left and Right Bank pumping plants. Includes but is not limited to Pumping Plants P1 through P38 located at the head end of the gravity laterals to supply the head required for the "P" laterals. Pumping Plants, tanks, reservoirs, re-lift pumping plants to serve lands west of the San Luis Canal. Pumping Plant 7.05 off Lateral 7.
- c. Related structures, appurtenances, pumping plants, pumps, motors, meters, valves, tanks, transformers and electrical

equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(2) Mendota Pool diversion facilities operated by Westlands Water District, including:

- a. Inlet Canal from the Fresno Slough.
- b. Pumping plants
  - i. 6-1, 6-2, 7-1, 7-2.
- c. Related structures, appurtenances, pumps, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(3) Pleasant Valley System, including:

- a. Intake canal and pipeline.
- b. Pleasant Valley Pumping Plant.
- c. Coalinga Canal, including related check structures, turnouts, and headworks.
- d. Pleasant Valley distribution system and pumping plants along the Coalinga Canal.
- e. Related structures, appurtenances, pumps, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(4) Drainage collection system, including:

- a. Carrier and collector pipelines, sumps, and sump pumps.
- b. San Luis Drain from Sta 6678+45 to Sta 8520+22.87.  
(Crossing with DMC to Laguna Ave crossing)
- c. Related structures, appurtenances, pumps, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(5) Tranquillity Field Office

- a. Buildings at 32650 West Adams Avenue, Tranquillity, CA 93668.
- b. All related fixtures and furnishings as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(6) Huron Field Office

- a. Buildings at 32450 South Lassen Avenue, Huron, CA 93234.
- b. All related fixtures and furnishings as specifically identified through the title transfer process of federally owned facilities, equipment, and real property.

(7) All real property interests held by the United States in lands underlying or otherwise associated with the facilities and equipment listed in this subsection (a), including all fee title, easements, and rights of way.

(b) DEMONSTRATION TREATMENT PLANT--Upon execution of the section 9(d) repayment contract with the Panoche Water District, or as soon thereafter as practicable, the Secretary shall transfer to Panoche Drainage District title to the San Luis Demonstration Treatment Plant situated within the San Joaquin River Improvement Project. Upon transfer of title, the Secretary shall have no further responsibility for the operations and maintenance of the San Luis Demonstration Treatment Plant.

(c) SAN LUIS DRAIN.—Upon the execution of the section 9(d) repayment contracts with the Northerly San Luis Unit Districts, or as soon thereafter as practicable, and subject to the policies and procedures referenced in subsection (g), the Secretary shall transfer to a willing entity title to the portion of the San Luis Drain from Milepost 105.72, Check 19 (near Russell Avenue) to Milepost 78.5 (Mud Slough) upon such terms as the Secretary determines are appropriate. If no willing entity is found to accept title, then the Secretary is authorized to maintain title to the facility and is authorized to transfer at a later date.

(d) TRANSFER TO THE NORTHERLY SAN LUIS UNIT DISTRICTS. — Upon the execution of the respective section 9(d) repayment contract with each Northerly San Luis Unit District, or as soon thereafter as practicable, and subject to the policies and procedures referenced in subsection (g), the Secretary shall transfer to such Northerly San Luis Unit District the United States' interest, if any, to their respective facilities as follows:

(1) To the Pacheco Water District, all facilities owned by the United States that are within and operated by the Pacheco Water District, including but not limited to:

- a. San Luis Canal Left Bank turnouts and any pumping plants operated by Pacheco Water District, including but not limited to facilities at San Luis Canal Milepost 89.66LA and 89.66LB.
- b. Related structures, appurtenances, pumping plants, pumps, pipelines, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property covered by this subsection (1).

(2) To the Panoche Water District, all facilities owned by the United States that are within and operated by the Panoche Water District, including but not limited to:

- a. San Luis Canal Left and Right Bank turnouts and any pumping plants operated by Panoche Water District, including but not limited to facilities at San Luis Canal Milepost 96.15L; 96.85L; 100.48L and 102.64L.
- b. Delta-Mendota Canal turnouts and any pumping plants operated by Panoche Water District including but not limited to facilities at Delta-Mendota Canal Milepost 93.25R and MP 96.70R.
- c. Related structures, appurtenances, pumping plants, pumps, pipelines, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property covered by this subsection (2).

(3) To the San Luis Water District, all facilities owned by the United States that are within and operated by the San Luis Water District, including but not limited to:

- a. All water conveyance and lateral systems, and other related works for the furnishing of water and all lands and interest in lands, any buildings, equipment and machinery necessary for the operation and maintenance of the water delivery facilities, pumping plants, turnouts, including but not limited to San Luis Water District pumping plants appurtenant to the Delta-Mendota Canal and the San Luis Canal, solely utilized by the San Luis Water District, located at miles posts:

D87.48R – Kaljian PP

S075.49R – PP6, PP7

S079.39R – PP8, PP9

S082.10R – PP10, PP11

S092.16R (A-D) - PP3, Fittje, PP4, PP5

S101.70R – PP16, PP17

- b. Related structures, appurtenances, pumping plants, pumps, pipelines, motors, meters, valves, tanks, transformers and electrical equipment as specifically identified through the title transfer process of federally owned facilities, equipment, and real property associated with this subsection (3).

(4) To the district receiving title to the associated facilities and equipment, all real property interests held by the United States in lands underlying or

otherwise associated with the facilities and equipment listed in this subsection (d), including all fee title, easements, and rights of way.

(e) Except as specifically provided in this Act, any transfer of title to the Pleasant Valley Pumping Plant, the Coalinga Canal, and any associated facilities shall not relieve any other Project Water service or repayment contractor of the requirement to pay any allocated costs associated with those conveyance or pumping facilities that are properly allocated to those contractors under existing law and Project ratesetting policies.

(f) Upon transfer of title to any facilities pursuant to section, the San Luis Unit Contractor(s) or other entity receiving title shall, as a condition to such transfer, formally agree that as of the date of transfer to:

(1) hold the United States harmless and indemnify the United States for any and all claims, cost, damages, and judgments of any kind arising out of any act, omission, or occurrence relating to the transferred facilities, except for such claims, costs, damages arising from acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of title transfer for which the United States is found liable under the Federal Tort Claims Act; and

(2) the United States shall have no responsibility for correcting and financing any repairs or deficiencies that may exist at the time of or following title transfer.

(g) The Secretary shall transfer title pursuant to this section consistent with all applicable Reclamation policies and procedures. The Secretary and the San Luis Unit Contractor(s) or other entity acquiring title shall comply with all applicable requirements under Federal and California law before title to a facility is transferred pursuant to this section.

## **SEC. 9. COMPLIANCE WITH APPLICABLE LAW.**

In implementing the measures authorized by this Act, the Secretary shall comply with all applicable Federal laws, rules, and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as necessary.

## **SEC. 10. NO WATER SUPPLY OR FINANCIAL IMPACTS ON OTHER CENTRAL VALLEY PROJECT CONTRACTORS**

Implementation of this Act and the Agreements authorized thereunder shall not:

(a) Result in the involuntary reduction in the contract water allocation to any Central Valley Project water service or repayment contractor, water rights settlement contractor, exchange contractor, or refuge contractor, including contractors in the Friant Division of the Central Valley Project;



- (b) Modify, amend or affect any of the rights and obligations of the parties to any Central Valley Project water service or repayment contract, water rights settlement contract, exchange contract, or refuge contract, including contracts in the Friant Division of the Central Valley Project; or
- (c) Alter the repayment obligation, if any, of (1) any Central Valley Project water service or repayment contractor; (2) any Central Valley Project settlement, refuge or exchange contractor; or (3) any Central Valley Project preference power contractor receiving water or power from the Central Valley Project, or shift any costs to such contractors that would otherwise have been properly assignable to San Luis Unit Contractors, including operations and maintenance costs, construction costs, or other capitalized costs allocated to San Luis Unit Contractors after the date of this Act.
- (d) Impair the ability of the United States to implement f the Stipulation of Settlement approved by the district court in Natural Resources Defense Council, et al. v. Rogers, et al, (Case No. CIV S-88-1658 (LKK/GGH) E.D.Cal.) on October 23, 2006, as authorized to be implemented by Title X of Public Law 111-11, including the Restoration Goal and Water Management Goal.
- (e) Diminish, impair, or otherwise affect in any manner any priorities for the allocation, delivery or use of water under applicable law, including any purposes of use and priorities established by Sections 3402 and 3406 of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4706).

#### **SEC. 11. RESTORATION FUND PAYMENTS BY WESTLANDS WATER DISTRICT**

For any year in which the allocation of water for south-of-Delta Central Valley Project long-term water irrigation service contractors or irrigation repayment contractors is greater than 75%, the Secretary shall calculate for Westlands Water District a per acre foot Restoration Fund payment based on a projection that Westlands Water District would take delivery of the full allocation made to south-of-Delta Central Valley Project long-term water service contractors or repayment contractors.



**From:** Jason Peltier

**Sent:** Sunday, May 1, 2016 7:59 AM

**To:** Ara Azhderian; Johnny Amaral; Dennis Cardoza; David Bernhardt; Ed Manning; Carolyn Jensen; Jon Rubin; Philip Williams

**Subject:** Ted Cruz has a Delta smelt plan: Disco ball, a little Barry White | The Sacramento Bee

<http://www.sacbee.com/news/politics-government/capitol-alert/article74912027.html>

**From:** Johnny Amaral  
**Sent:** Wednesday, May 11, 2016 8:50 AM  
**To:** 'Petersen, Scott'; 'Gayle Holman'  
**CC:** 'Smith, Ryan A.'; 'David Bernhardt'; 'Solberg, Kristina'; tbirmingham@westlandswater.org  
**Subject:** RE: Drainage Legislation introduction

Are you including quotes or comments from the northerly districts also?

---

**From:** Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]  
**Sent:** Wednesday, May 11, 2016 8:45 AM  
**To:** 'Gayle Holman'  
**Cc:** Johnny Amaral; 'Smith, Ryan A.'; David Bernhardt; Solberg, Kristina; tbirmingham@westlandswater.org  
**Subject:** Drainage Legislation introduction  
**Importance:** High

Good morning Gayle,

My boss anticipates introducing the legislation for the drainage settlement for the entire San Luis Unit by close of business today or at the latest tomorrow. Would Westlands like to include a quote in the press release that my boss plans to put out?

We'll send you a draft later today. Also, is there anything in particular that Westlands would like to ensure is noted in the release?

Best, Scott

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff  
Rep. Jim Costa (CA-16)  
1314 Longworth House Office Building  
Washington, DC 20515  
(202) 225-3341

**From:** Petersen, Scott  
**Sent:** Wednesday, May 11, 2016 8:55 AM  
**To:** 'Johnny Amaral'; 'Gayle Holman'  
**CC:** 'Smith, Ryan A.'; 'David Bernhardt'; Solberg, Kristina; tbirmingham@westlandswater.org  
**Subject:** RE: Drainage Legislation introduction

I have reached out to them, but they haven't responded. You all got the outreach e-mail at the same time.

I can loop back around with you all when/if they respond, or alternatively, if you want to provide a quote and set terms for its inclusion, ie, other districts comments as well, that works for us. Just let me know what makes the most sense for Westlands.

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff  
Rep. Jim Costa (CA-16)

---

**From:** Johnny Amaral [mailto:jamaral@westlandswater.org]  
**Sent:** Wednesday, May 11, 2016 11:50 AM  
**To:** Petersen, Scott; 'Gayle Holman'  
**Cc:** 'Smith, Ryan A.'; 'David Bernhardt'; Solberg, Kristina; tbirmingham@westlandswater.org  
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**From:** Petersen, Scott  
**Sent:** Wednesday, May 11, 2016 9:14 AM  
**To:** 'Johnny Amaral'; 'Gayle Holman'  
**CC:** 'Smith, Ryan A.'; 'David Bernhardt'; Solberg, Kristina; [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)  
**Subject:** RE: Drainage Legislation introduction

Sounds like a plan. I'll loop back around when we have a response from the others.

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff  
Rep. Jim Costa (CA-16)

---

**From:** Johnny Amaral [<mailto:jamaral@westlandswater.org>]  
**Sent:** Wednesday, May 11, 2016 12:09 PM  
**To:** Petersen, Scott; 'Gayle Holman'  
**Cc:** 'Smith, Ryan A.'; 'David Bernhardt'; Solberg, Kristina; [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)  
**Subject:** RE: Drainage Legislation introduction

My philosophy on making public comments is...first, do no harm. I don't think it's good for you or us if WE are the target of criticism upon bill introductio. There will be plenty of that to deal with as this progresses. So let's wait and see what the other districts do.

---

**From:** Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]  
**Sent:** Wednesday, May 11, 2016 8:55 AM  
**To:** 'Johnny Amaral'; 'Gayle Holman'  
**Cc:** 'Smith, Ryan A.'; 'David Bernhardt'; Solberg, Kristina; [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)  
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Deputy Chief of Staff  
Rep. Jim Costa (CA-16)

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**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

**From:** Bernhardt, David L.  
**Sent:** Friday, May 13, 2016 3:10 AM  
**To:** Johnny Amaral (jamaral@westlandswater.org)  
**Subject:** FYI

Senate gives final approval to energy and water spending bill Back

By Darius Dixon | 05/12/2016 02:29 PM EDT

The Senate today cleared its fiscal 2017 energy and water spending bill, the chamber's first appropriations measure of the season.

The \$37.5 billion bill to fund the Energy Department, Army Corps of Engineers and the Bureau of Reclamation, passed 90-8. The bill also signs off on budgets for FERC and the Nuclear Regulatory Commission. It's the first energy and water measure to be approved on the Senate floor outside of an omnibus in several years.

Despite being temporarily derailed as Democrats rebelled over an amendment related to Iran, Sen. Lamar Alexander, who chairs energy and water appropriations, said it had been "a very good process."

There had been "a couple of bumps," Alexander said Wednesday, "but this is the United States Senate. We know bumps."

Attention now moves to the House, where a companion measure that emerged from committee last month comes in \$93 million below the Senate's version. The House energy and water spending measure also includes several controversial provisions not in the Senate bill, including California drought language from the state's Republicans, as well as funding for the Yucca Mountain nuclear waste project.

House spending measures could start coming to the floor next week.

Senate Majority Leader Mitch McConnell has said the upper chamber would next debate two appropriations bill jointly: Military Construction-Veterans Affairs, and Transportation, Housing and Urban Development.

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**From:** Johnny Amaral

**Sent:** Monday, May 16, 2016 7:42 AM

**To:** Ryan A. 'Smith; Mike Burns; Ed Manning; Denny Rehberg; Dennis Cardoza; David Bernhardt; Catherine Karen; Carolyn Jensen

**Subject:** No calls today

I'm triple booked at the moment. I apologize for the short notice

Best,

Johnny Amaral

**From:** Johnny Amaral  
**Sent:** Wednesday, May 18, 2016 3:59 PM  
**To:** 'Noles, Holly A.'  
**CC:** 'Bernhardt, David L.'  
**Subject:** RE: Westlands Next Week

5:30 pm. Room for 6 people would be fine I think

Thanks Holly!

---

**From:** Noles, Holly A. [mailto:HNOLES@bhfs.com]  
**Sent:** Tuesday, May 17, 2016 8:46 AM  
**To:** Johnny Amaral  
**Cc:** Bernhardt, David L.  
**Subject:** Westlands Next Week

Good Morning Johnny-

Please let me know how I can assist with meeting space and restaurant reservations for next week. I noted where you would like to use BHFS space to conduct hearing prep- what time and how many people should I plan for? Thank you in advance.

-Holly

**Holly A. Noles**  
Executive Assistant  
**Brownstein Hyatt Farber Schreck, LLP**  
1350 I Street, NW, Suite 510  
Washington, DC 20005  
202.652.2352 tel  
[HNOLES@bhfs.com](mailto:HNOLES@bhfs.com)

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**From:** Bernhardt, David L.

**Sent:** Friday, May 20, 2016 7:06 AM

**To:** Ckaren@sidley.com; Dennis Cardoza (dcardoza@foley.com); denny rehberg (dennyrehberg@icloud.com); Johnny Amaral (jamaral@westlandswater.org)

**Subject:** FYI

**Attachments:** 20160517 Murkowski & Cantwell (support S. 2533).pdf; 5.18.16 Dear Colleague in Opposition to HR 5247.pdf

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**Congress of the United States**  
**Washington, DC 20515**

May 17, 2016

The Honorable Lisa Murkowski  
United States Senator  
304 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Maria Cantwell  
United States Senator  
304 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Murkowski and Cantwell:

We are writing to you as the Chairman and Ranking Member of the Senate Energy and Natural Resources Committee to express our support for Senator Dianne Feinstein's S.2533, the California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act, and to request that you provide assistance to Senator Feinstein in passing this legislation.

Despite improved hydrologic conditions in 2016, many regions in California, including the San Francisco Bay area, the San Joaquin Valley, and southern California, will continue to suffer water supply shortages resulting from four years of prolonged drought and regulations that affect the operations of the State's two major water supply projects. S.2533 provides reasonable solutions to address both the short-term and long-term water supply needs for the State. It does this by investing in water storage, conservation, recycling and desalination, along with innovative water infrastructure financing. These provisions align with Proposition 1, which was passed by California voters in 2014, thus enhancing State law with the coordinated activities of the Federal agencies.

The bill also avoids violating or overriding landmark environmental laws including the Endangered Species Act or the associated biological opinions that govern project operations at certain times of the year, and also upholds and protects state water rights and water law. There is an environmental protection mandate repeated throughout the text, as well as a clear savings clause that explicitly prohibits implementation of the bill a manner that "overrides, modifies, or amends the applicability of the Endangered Species Act . . . or the application of the smelt and salmonid biological opinions."

Moreover, S.2533 makes provision for additional protections for at-risk fish species and provides additional tools to improve the Sacramento San Joaquin Bay-Delta environment. This drought has shown that we must take a holistic look at how we manage the entire ecosystem for improved outcomes for both native species and water supply reliability. This bill looks at a variety of ways to protect imperiled fish species by providing funding to increase gravel rearing and spawning habitat, improve monitoring, reduce the effects of entrainment, reduce the impacts of predation, and improve the agencies' management of cold water.

In drafting S.2533 Senator Feinstein sought input from federal agencies charged with implementing federal statutes intended to protect the fish and wildlife resources, the State of California, public water agencies that serve virtually every region of the State, and conservation organizations interested in protecting wetlands, fish and wildlife, and other environmental resources. S.2533 is thoughtful legislation that protects the environment and will also improve the reliability of water supplies for the State in the short-term and build improved drought resiliency in the long term.

Again, we request that you support Senator Feinstein's efforts to pass this important legislation and make her aware of that support. We stand ready to provide any assistance you need.

Sincerely,



JOHN GARAMENDI  
Member of Congress




JIM COSTA  
Member of Congress




TONY CARDENAS  
Member of Congress



LORETTA SANCHEZ  
Member of Congress



SCOTT PETERS  
Member of Congress



JUAN VARGAS  
Member of Congress



ADAM SCHIFF  
Member of Congress



KAREN BASS  
Member of Congress



**Congress of the United States**  
**Washington, DC 20515**

**Hold Off on Supporting S. 2533 / H.R. 5247**  
**Significant Concerns Remain on Controversial Provisions**

Dear Colleague,

Today the Senate Subcommittee on Water and Power held a hearing on S. 2533, the California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act, just one day after the introduction of its House companion H.R. 5247.

Although the bills offered by Sen. Feinstein and Rep. Garamendi include important investments in much-needed water infrastructure, they also contain dangerous short-term provisions that could have devastating long-term impacts to the states of the West Coast and their fisheries, clean water, and the communities that depend on a healthy environment. As such we strongly urge you to withhold your support, either through cosponsorship or letters that explicitly advocate for these controversial provisions, until those provisions are improved or removed.

A wide coalition of environmental groups, including **American Rivers, Defenders of Wildlife, Earthjustice, Endangered Species Coalition, League of Conservation Voters, Natural Resources Defense Council, and the Sierra Club**, have opposed the bill. Their letter praises the long dedication of Senator Feinstein and her staff on this important issue, and their support of the positive long-term provisions in the legislation, but it concludes that “several specific provisions in this title would authorize and direct operations of the state and federal water projects that are inconsistent with protections for salmon and other endangered species required under existing biological opinions.”

Last week, the **Pacific Fishery Management Council** also released an analysis of the bill that raises serious concerns about its impact on California’s wild salmon populations. The PFMC is an agency created by federal law charged with regulating ocean fishing off the coasts of California, Oregon, and Washington. Its members include fishery experts from state and federal fish agencies along with representatives of key fishing groups. Specifically, the PFMC letter states:

- The bill would “cause irreparable harm to California salmon and the commercial, recreational, and tribal fishing communities that depend on them.”
- The bill’s provisions are “particularly dangerous to salmon at a time when juvenile survival has been disastrously low after two years of poor temperature and flow conditions in the rivers.”
- The bill “authorizes weaker protections for salmon and other endangered species” by allowing increased pumping from the Delta.

Letters of opposition have also been sent by the American Sportfishing Association (ASA), the Alaska Longline Fishermen's Association (ALFA), and over 200-salmon related businesses in Alaska, Washington, Oregon, and California.

Until these widespread concerns over the bill's impacts to salmon and the fishing industry are alleviated, we respectfully request that you refrain from offering your full support of the bill.

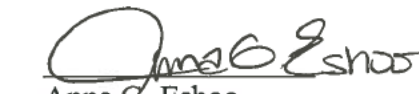
Sincerely,



Peter DeFazio  
Member of Congress



Jared Huffman  
Member of Congress



Anna G. Eshoo  
Member of Congress



Jerry McNerney  
Member of Congress



Kurt Schrader  
Member of Congress



Mike Thompson  
Member of Congress



Barbara Lee  
Member of Congress



Mark DeSaulnier  
Member of Congress



Doris Matsui  
Member of Congress

**From:** Jason Peltier

**Sent:** Friday, May 20, 2016 1:26 PM

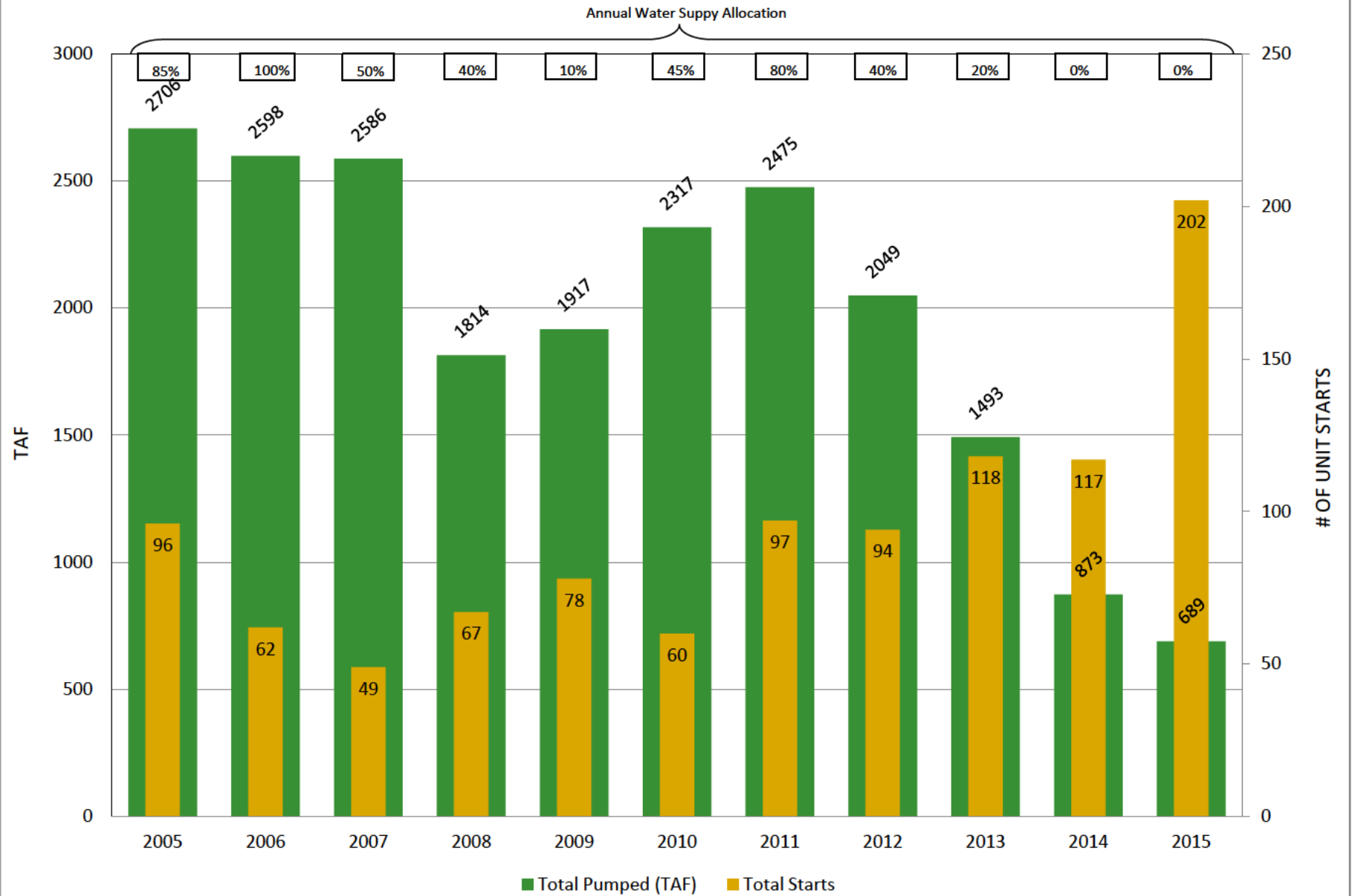
**To:** Ara Azhderian; Jon Rubin; Tom Birmingham; Shelley Ostrowski; Dennis Cardoza; David Bernhardt

**Subject:** Very telling charts

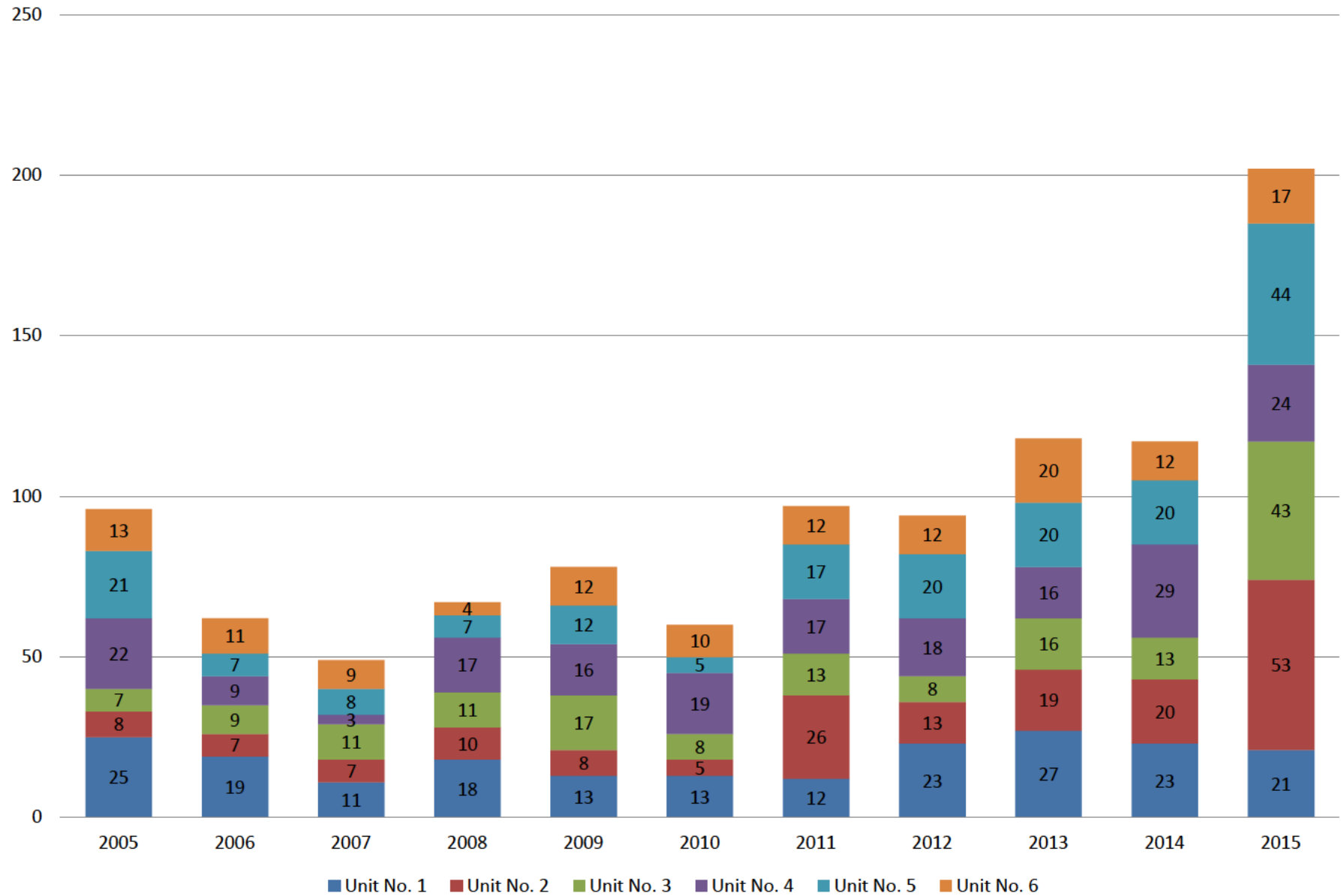
**Attachments:** JPP Start Summary since 2005.pdf; ATT00001.txt



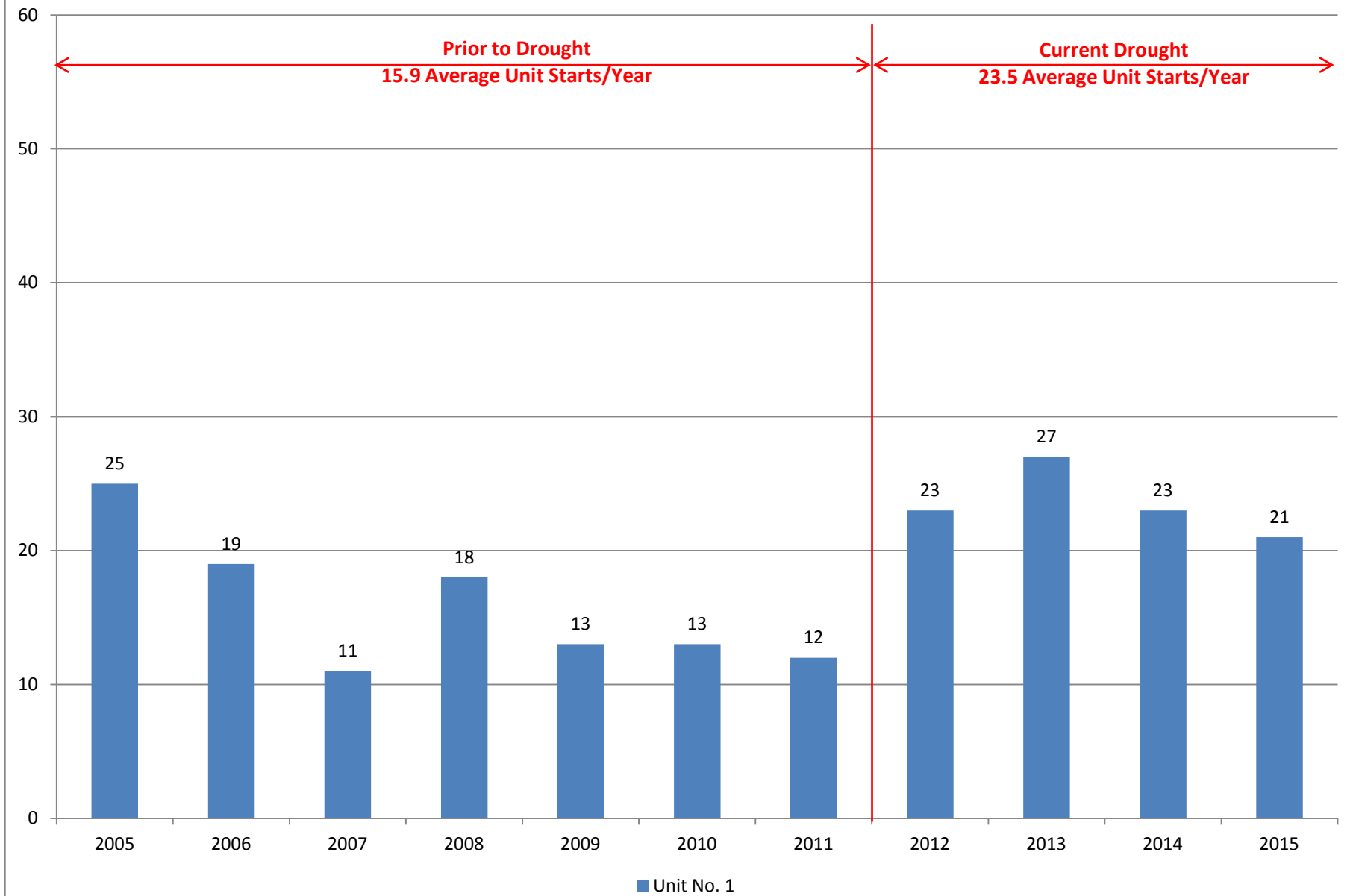
# JPP Amount Pumped vs. # of Starts



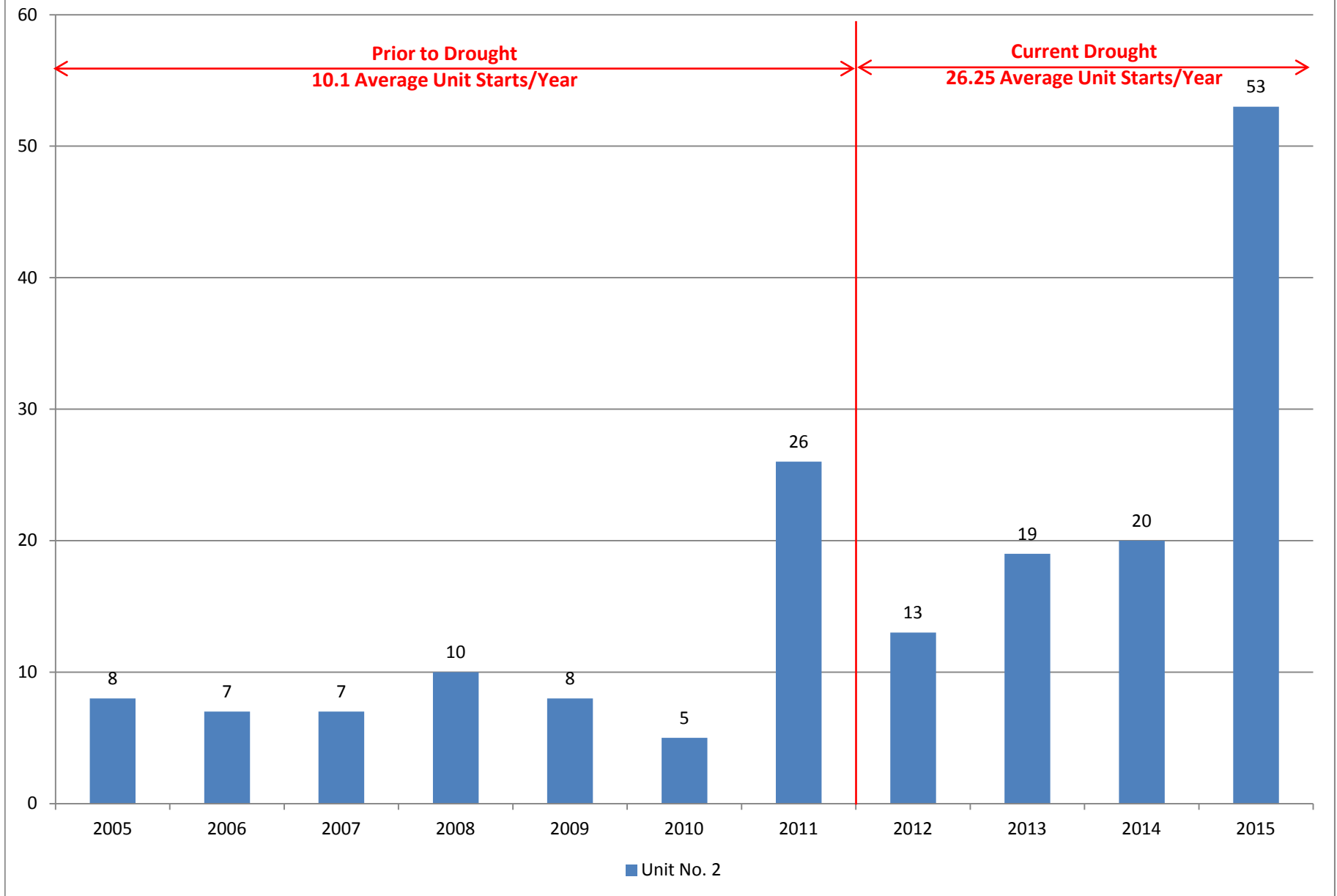
## Total Units Starts by Year



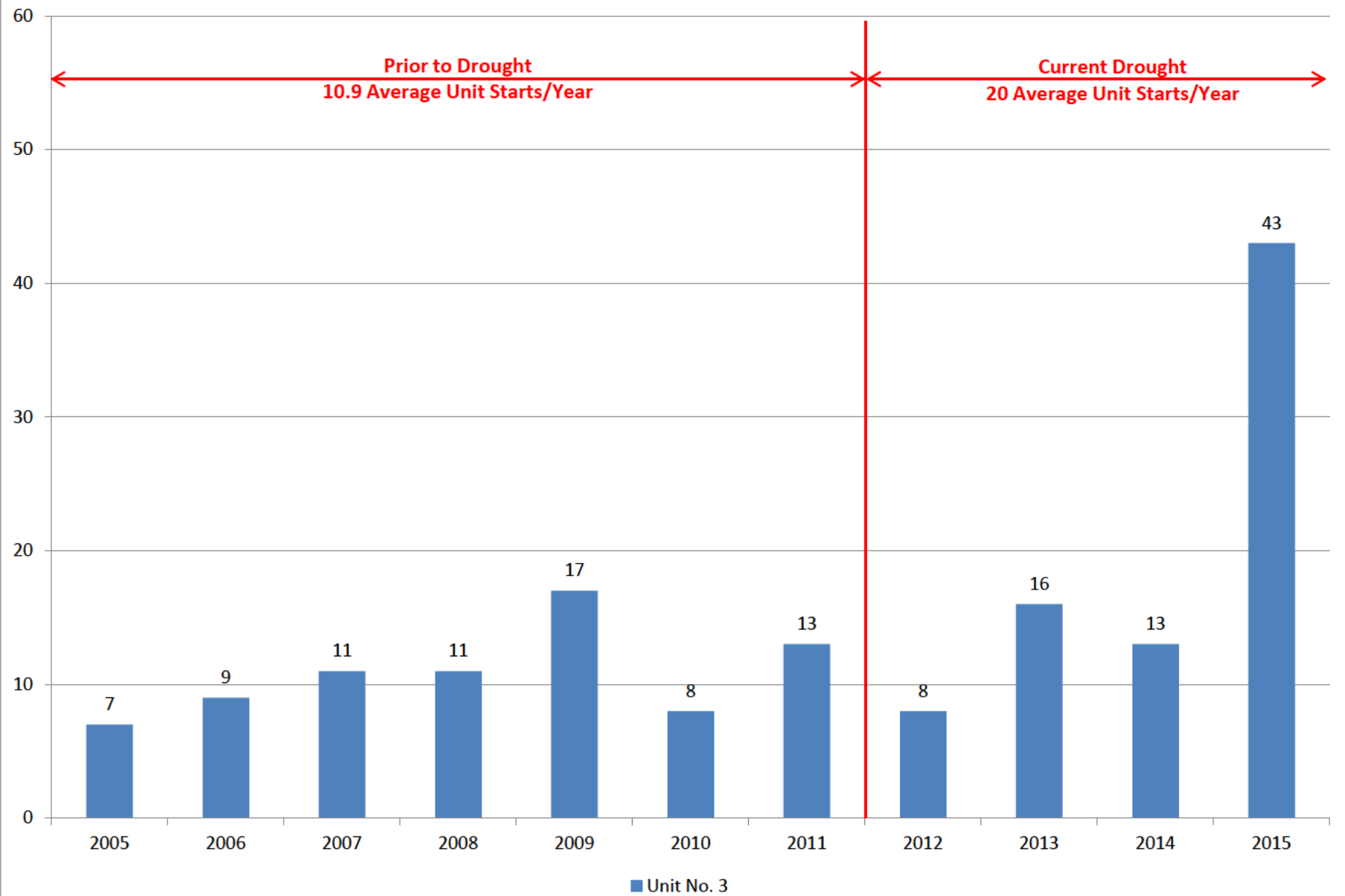
## Unit No. 1 (850 cfs) (Series wound unit)



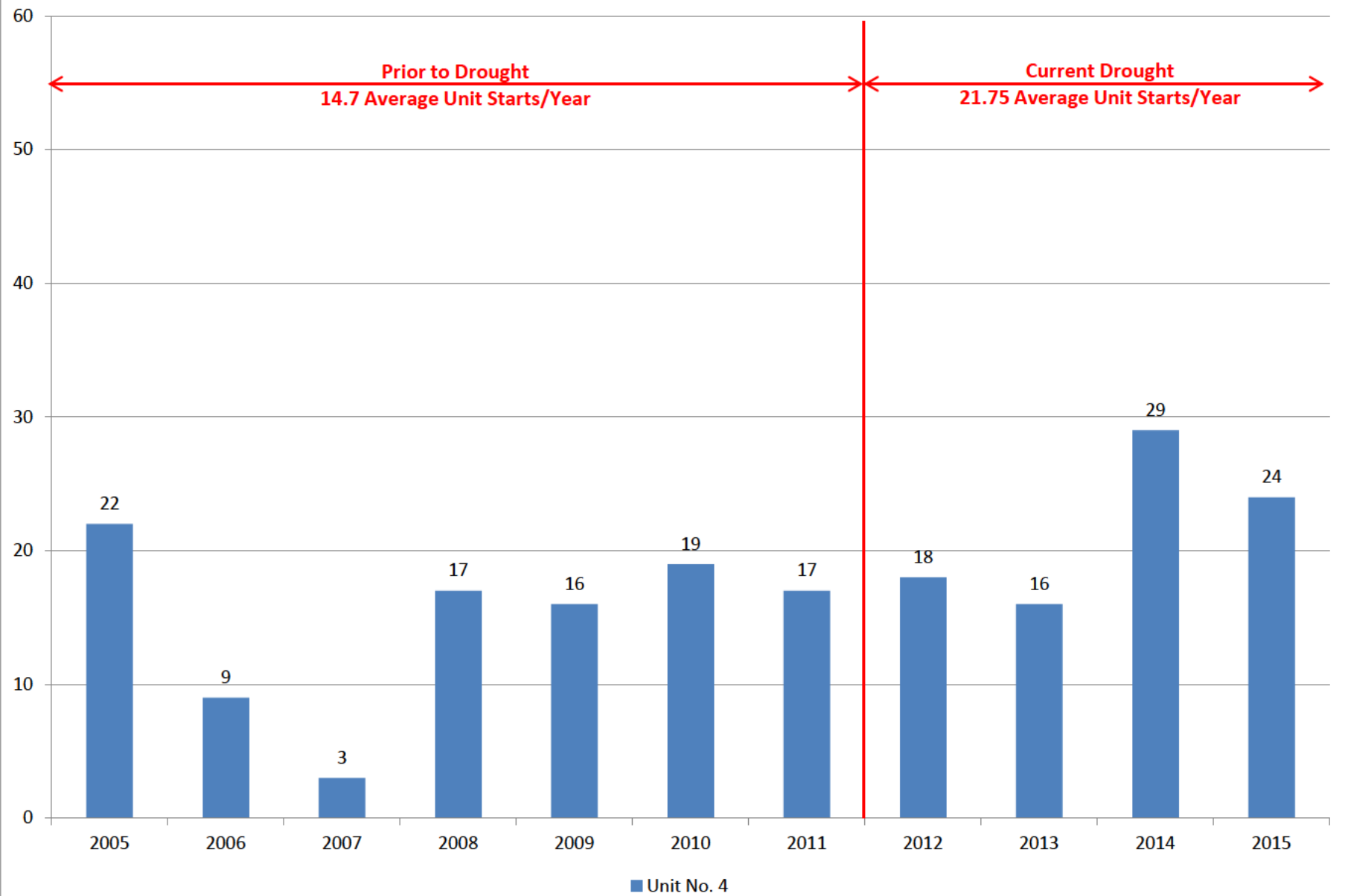
## Unit No. 2 (975 cfs) (Parallel wound unit)



### Unit No. 3 (1,000 cfs) (Series wound unit)



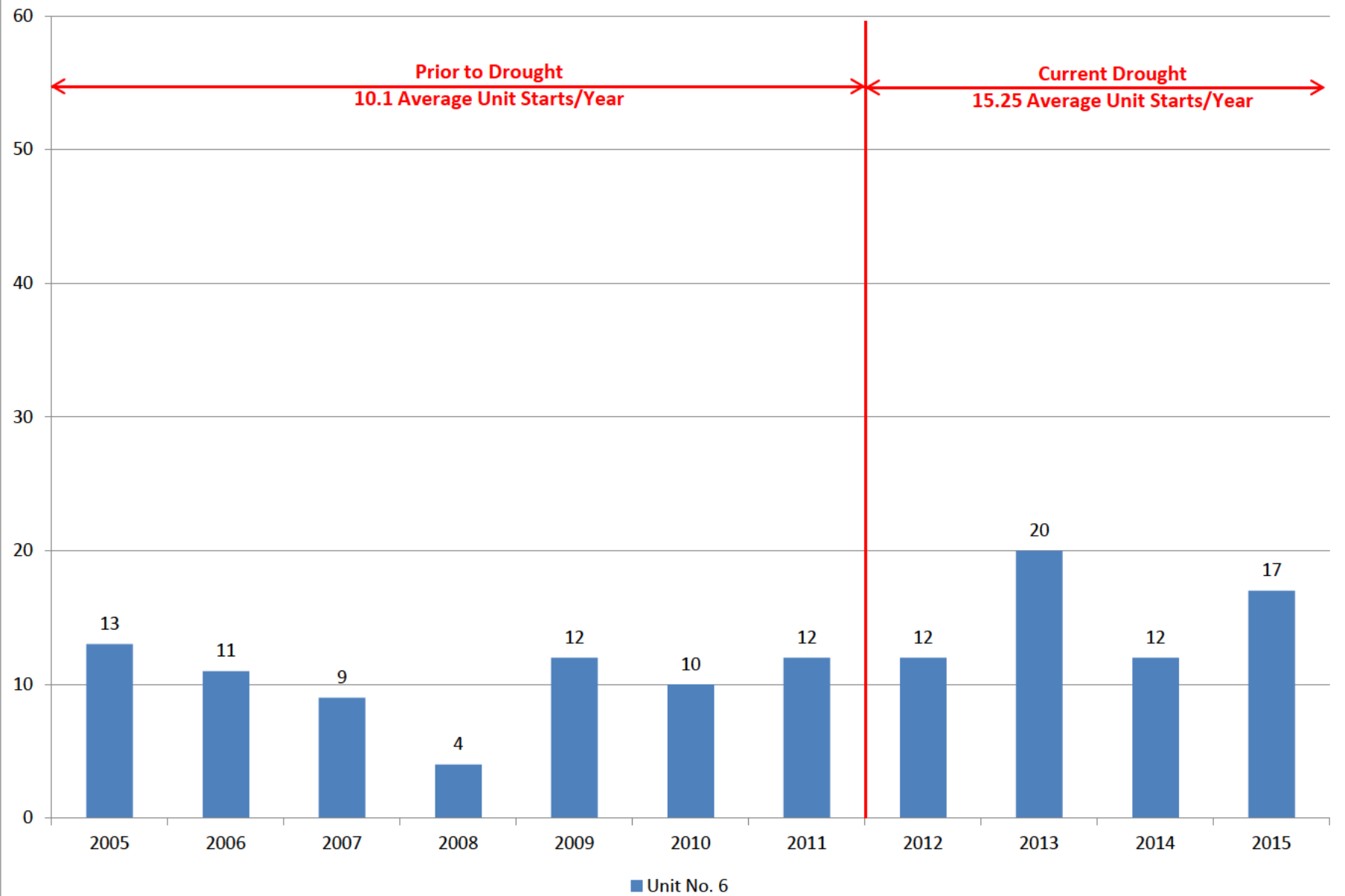
### Unit No. 4 (850 cfs) (Parallel wound unit)



### Unit No. 5 (950 cfs) (Series wound unit)



## Unit No. 6 (1,000 cfs) (Parallel wound unit)








**From:** Bernhardt, David L.  
**Sent:** Friday, May 20, 2016 4:17 PM  
**To:** Johnny Amaral  
**Subject:** Fwd: The Leader's Weekly Schedule - Week of 5/23/16

Next weeks floor schedule

David Bernhardt

Begin forwarded message:

**From:** Kevin McCarthy <[McCarthy.FloorOffice@mail.house.gov](mailto:McCarthy.FloorOffice@mail.house.gov)>  
**Date:** May 20, 2016 at 7:07:23 PM EDT  
**To:** <[Dbernhardt@bhfs.com](mailto:Dbernhardt@bhfs.com)>  
**Subject:** The Leader's Weekly Schedule - Week of 5/23/16



**LEADER'S WEEKLY SCHEDULE**  
**WEEK OF MAY 23RD**

**MONDAY, MAY 23RD**  
On Monday, the House will meet at 12:00 p.m. for morning hour and 2:00 p.m. for legislative business. Votes will be postponed until 6:30 p.m.

**Legislation Considered Under Suspension of the Rules:**

- 1) [H.R. 4889](#) - Kelsey Smith Act (*Sponsored by Rep. Kevin Yoder / Energy and Commerce Committee*)
- 2) [H.R. 4167](#) - Kari's Law Act of 2016, as amended (*Sponsored by Rep. Louie Gohmert / Energy and Commerce Committee*)
- 3) [H.R. 3998](#) - Securing Access to Networks in Disasters Act, as amended (*Sponsored by Rep. Frank Pallone / Energy and Commerce Committee*)
- 4) [H.R. 2589](#) - To amend the Communications Act of 1934 to require the Federal Communications Commission to publish on its Internet website changes to the rules of the Commission not later than 24 hours after adoption (*Sponsored by Rep. Renee Ellmers / Energy and Commerce Committee*)
- 5) [H.R. 496](#) - Alabama Hills National Scenic Area Establishment Act, as amended (*Sponsored by Rep. Paul Cook / Natural Resources Committee*)
- 6) [S. 184](#) - Native American Children's Safety Act (*Sponsored by Sen. John Hoeven / Natural Resources Committee*)
- 7) [H.R. 5077](#) - The Intelligence Authorization Act for Fiscal Year 2017, as amended (*Sponsored by Rep. Devin Nunes / Intelligence Committee*)
- 8) [H.R. 2121](#) - To amend the S.A.F.E. Mortgage Licensing Act of 2008 to provide a temporary license for loan originators transitioning between

employers, and for other purposes (*Sponsored by Rep. Steve Stivers / Financial Services Committee*)

**9) [H.R. 4139](#)** - Fostering Innovation Act of 2015 (*Sponsored by Rep. Kyrsten Sinema / Financial Services Committee*)

**10) [H.R. 1762](#)** - To name the Department of Veterans Affairs community-based outpatient clinic in The Dalles, Oregon, as the "Loren R. Kaufman Memorial Veterans' Clinic", as amended (*Sponsored by Rep. Greg Walden / Veterans' Affairs Committee*)

**11) [H.R. 960](#)** - To designate the Department of Veterans Affairs community based outpatient clinic in Newark, Ohio, as the "Daniel L. Kinnard Department of Veterans Affairs Community Based Outpatient Clinic ", as amended (*Sponsored by Rep. Pat Tiberi / Veterans' Affairs Committee*)

**12) [H.R. 2460](#)** - To amend title 38, United States Code, to improve the provision of adult day health care services for veterans (*Sponsored by Rep. Lee Zeldin / Veterans' Affairs Committee*)

**13) [H.R. 3715](#)** - Final Farewell Act of 2016, as amended (*Sponsored by Rep. Corrine Brown / Veterans' Affairs Committee*)

**14) [H.R. 3989](#)** - Support Our Military Caregivers Act, as amended (*Sponsored by Rep. Elise Stefanik / Veterans' Affairs Committee*)

**15) [H.R. 5229](#)** - Improving Transition Programs for All Veterans Act, as amended (*Sponsored by Rep. Mark Takano / Veterans' Affairs Committee*)

**16) [H.R. 5286](#)** - VA Construction and Lease Authorization, Health, and Benefits Enhancement Act, as amended (*Sponsored by Rep. Jeff Miller / Veterans' Affairs Committee*)

**17) [H.R. 3956](#)** - VA Health Center Management Stability and Improvement Act, as amended (*Sponsored by Rep. Mike Bost / Veterans' Affairs Committee*)

**18) [H.R. 433](#)** - To designate the facility of the United States Postal Service located at 523 East Railroad Street in Knox, Pennsylvania, as the "Specialist Ross A. McGinnis Memorial Post Office" (*Sponsored by Rep. G.T. Thompson / Oversight and Government Reform Committee*)

**19) [H.R. 3931](#)** - To designate the facility of the United States Postal Service located at 620 Central Avenue Suite 1A in Hot Springs National Park, Arkansas, as the "Chief Petty Officer Adam Brown United States Post Office" (*Sponsored by Rep. Bruce Westerman / Oversight and Government Reform Committee*)

**20) [H.R. 3953](#)** - To designate the facility of the United States Postal Service located at 4122 Madison Street, Elfers, Florida, as the "Private First Class Felton Roger Fussell Memorial Post Office" (*Sponsored by Rep. Gus Bilirakis / Oversight and Government Reform Committee*)

**21) [H.R. 4747](#)** - To designate the facility of the United States Postal Service located at 6691 Church Street in Riverdale, Georgia, as the "Major Gregory E.

Barney Post Office Building" (*Sponsored by Rep. David Scott / Oversight and Government Reform Committee*)

**22) [H.R. 4877](#)** - To designate the facility of the United States Postal Service located at 3130 Grants Lake Boulevard in Sugar Land, Texas, as the "LCpl Garrett W. Gamble, USMC Post Office Building" (*Sponsored by Rep. Pete Olson / Oversight and Government Reform Committee*)

**23) [H.R. 4975](#)** - To designate the facility of the United States Postal Service located at 5720 South 142nd Street in Omaha, Nebraska, as the "Petty Officer 1st Class Caleb A. Nelson Post Office Building" (*Sponsored by Rep. Brad Ashford / Oversight and Government Reform Committee*)

**24) [H.R. 4987](#)** - To designate the facility of the United States Postal Service located at 3957 2nd Avenue in Laurel Hill, Florida, as the "Sergeant First Class William 'Kelly' Lacey Post Office" (*Sponsored by Rep. Jeff Miller / Oversight and Government Reform Committee*)

**25) [H.R. 4761](#)** - To designate the facility of the United States Postal Service located at 61 South Baldwin Avenue in Sierra Madre, California, as the "Louis Van Iersel Post Office" (*Sponsored by Rep. Judy Chu / Oversight and Government Reform Committee*)

**26) [H.R. 3218](#)** - To designate the facility of the United States Postal Service located at 836 Anacapa Street, Santa Barbara, California as the "Special Warfare Operator Master Chief Petty Officer (SEAL) Louis 'Lou' J. Langlais Post Office Building" (*Sponsored by Rep. Lois Capps / Oversight and Government Reform Committee*)

**27) [H.R. 4425](#)** - To designate the facility of the United States Postal Service located at 110 East Powerhouse Road in Collegeville, Minnesota, as the "Eugene J. McCarthy Post Office" (*Sponsored by Rep. Tom Emmer / Oversight and Government Reform Committee*)

**28) [H.R. 3969](#)** - To designate the Department of Veterans Affairs community-based outpatient clinic in Laughlin, Nevada, as the "Master Chief Petty Officer Jesse Dean Department of Veterans Affairs Community-Based Outpatient Clinic", as amended (*Sponsored by Rep. Joe Heck / Veterans' Affairs Committee*)

**29) [H.R. 4465](#)** - Federal Assets Sale and Transfer Act of 2016, as amended (*Sponsored by Rep. Jeff Denham / Transportation and Infrastructure Committee*)

**30) [H.R. 4487](#)** - Public Buildings Reform and Savings Act of 2016, as amended (*Sponsored by Rep. Lou Barletta / Transportation and Infrastructure Committee*)

#### **TUESDAY, MAY 24TH AND THE BALANCE OF THE WEEK**

On Tuesday and Wednesday, the House will meet at 10:00 p.m. for morning hour and 12:00 p.m. for legislative business.

On Thursday, the House will meet at 9:00 a.m. for legislative business. Last votes expected no later than 3:00 p.m.

On Friday, no votes are expected in the House.

**\*\*Members are Advised that Late Votes are Possible in the House Next Week\*\***

**H.R. 897** - Zika Vector Control Act, Rules Committee Print (Subject to a Rule) (Sponsored by Rep. Bob Gibbs / Transportation and Infrastructure Committee)

**House Amendment to Senate Amendment to H.R. 2576** - TSCA Modernization Act of 2015 (Subject to a Rule) (Sponsored by Rep. John Shimkus / Energy and Commerce Committee)

**H.R. 5233** - Clarifying Congressional Intent in Providing for DC Home Rule Act of 2016 (Subject to a Rule) (Sponsored by Rep. Mark Meadows / Oversight and Government Reform Committee)

**H.R. 5055** - Energy and Water Development and Related Agencies Appropriations Act, 2017 (Subject to a Rule) (Sponsored by Rep. Mike Simpson / Appropriations Committee)

**House Amendment to S. 2012** - Energy Policy Modernization Act of 2016 (Subject to a Rule) (Sponsored by Sen. Lisa Murkowski / Energy and Commerce Committee / Natural Resources Committee)

**Motion to Go to Conference on S. 2012, and Possible Democrat Motion to Instruct Conferees**

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**Subject:** Fwd: Hearing Prep

**Location:**1331 Longworth

**Start:**5/24/2016 6:00 AM

**End:**5/24/2016 6:30 AM

**Show Time As:**Tentative

**Recurrence:**(none)

**Meeting Status:**Not yet responded

**Organizer:**Weaver, Kiel

**Required Attendees:**Thomas W. (Tom) Birmingham Esq.; Johnny Amaral

**Resources:**1331 Longworth

David Bernhardt

Begin forwarded message:

**From:**"Weaver, Kiel"<[Kiel.Weaver@mail.house.gov](mailto:Kiel.Weaver@mail.house.gov)>  
**To:**"Bernhardt, David L."<[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>,"Dunklin, Kristina"<[Kristina.Dunklin@mail.house.gov](mailto:Kristina.Dunklin@mail.house.gov)>,"Wong, Bryson"<[Bryson.Wong@mail.house.gov](mailto:Bryson.Wong@mail.house.gov)>,"Petersen, Scott"<[Scott.Petersen@mail.house.gov](mailto:Scott.Petersen@mail.house.gov)>  
**Subject:**Hearing Prep

When: Tuesday, May 24, 2016 9:00 AM-9:30 AM. (UTC-05:00) Eastern Time (US&Canada)

Where: 1331 Longworth

\*~\*~\*~\*~\*~\*~\*~\*~\*~\*

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**From:** Johnny Amaral

**Sent:** Sunday, May 22, 2016 6:05 AM

**To:** Bernhardt, David L.

**CC:** Thomas W. (Tom) Birmingham Esq.

**Subject:** Re: Can we meet at 9am on Tuesday to do some hearing prep? Please bring Tom Birmingham if he is available. Will send an invite out

He confirmed 9 am to me last week. Which is why we go to jim's office at 9:45.

Best,

Johnny Amaral

On May 22, 2016, at 6:02 AM, Bernhardt, David L. <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)> wrote:

David Bernhardt

Begin forwarded message:

**From:** "Weaver, Kiel" <[Kiel.Weaver@mail.house.gov](mailto:Kiel.Weaver@mail.house.gov)>

**Date:** May 22, 2016 at 8:10:29 AM EDT

**To:** "Bernhardt, David L." <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)>, "Dunklin, Kristina"

<[Kristina.Dunklin@mail.house.gov](mailto:Kristina.Dunklin@mail.house.gov)>, "Petersen, Scott"

<[Scott.Petersen@mail.house.gov](mailto:Scott.Petersen@mail.house.gov)>

**Cc:** "Wong, Bryson" <[Bryson.Wong@mail.house.gov](mailto:Bryson.Wong@mail.house.gov)>

**Subject:** Can we meet at 9am on Tuesday to do some hearing prep? Please bring Tom Birmingham if he is available. Will send an invite out

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**Attachments:** WWD Supplemental Media Coverage 6-10-16.docx

Attached please find the supplemental media coverage report.

## Petra Pérez

**KP PUBLIC AFFAIRS**

**1201 K Street, Suite 800, Sacramento, CA 95814**  
**p. 916.448-2162 d. 916.498.7735 f. 916.448.4923**  
**w. [www.ka-pow.com](http://www.ka-pow.com) e. [pperez@ka-pow.com](mailto:pperez@ka-pow.com)**



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*June 10, 2016*

## Supplemental WWD Media Coverage Summary:

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AP Exclusive: **Water** giant gave \$1.4M loan to deputy general manager Jason Peltier "to buy riverfront home"

Politico - Jun 8, 2016

--the loan remains unpaid nine years later, "though the official has left the agency"...

AP Exclusive: **Water** giant gave \$1.4M loan to official

Washington Times - Jun 8, 2016

**Westlands Water District** says its 2007 loan to deputy general manager Jason Peltier - now at \$1.57 million with a 0.84 percent annual interest rate - is allowed under agency rules on salary. But experts in governance say the deal raises red flags, not ...

AP Exclusive: **Water** giant gave \$1.4M loan to official

U.S. News & World Report - Jun 8, 2016

In this photo taken Wednesday, June 1, 2016 is the Walnut Grove, Calif., home of Jason Peltier, the former deputy general manager of the **Westland Water District**. Peltier received a \$1.4 million loan, from the water district to buy the home in 2007 and ...

AP Exclusive: **Water** giant gave \$1.4M loan to official

Chicago Daily Herald - Jun 9, 2016

SAN FRANCISCO -- A California public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years ...

AP Exclusive: **Water** giant gave \$1.4M loan to official

Los Angeles Times - Jun 9, 2016

A California public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years later although the ...

AP Exclusive: **Water** giant gave \$1.4M loan to official

San Francisco Chronicle - Jun 9, 2016

**Westlands Water District** says its 2007 loan to deputy general manager Jason Peltier — now at \$1.57 million with a 0.84 percent annual interest rate — is allowed under agency rules on salary. But experts in governance say the deal raises red flags ...

## Westlands Water District loaned exec \$1.4 million for posh home

Fresno Bee – June 9, 2016

A Fresno-based public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years later although the official has left the agency, according to records and interviews.

## AP Exclusive: Water giant gave \$1.4M loan to official

Sacramento Bee - Jun 8, 2016

A California public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years later although the ...

## Water agency's 'sweet' loan to ex-official unpaid after 9 years

SFGate - 20 hours ago

**Westlands Water District**, based in Fresno, says its 2007 loan to Deputy General Manager Jason Peltier — now at \$1.57 million with a 0.84 percent annual interest rate — is allowed under agency rules on salary. But experts in governance say the deal ...

## AP Exclusive: Water giant gave \$1.4M loan to official

KSBY San Luis Obispo News - Jun 8, 2016

SAN FRANCISCO (AP) - A California water district penalized by federal regulators this year gave one of its executives a \$1.4 million home loan. Records obtained by The Associated Press from **Westlands Water District** detail the 2007 loan, now at less ...

## AP Exclusive: Water giant gave \$1.4M loan to official

The San Luis Obispo Tribune - Jun 8, 2016

In this photo taken Wednesday, June 1, 2016 is the Walnut Grove, Calif., home of Jason Peltier, the former deputy general manager of the **Westland Water District**. Peltier received a \$1.4 million loan, from the water district to buy the home in 2007 and ...

## AP Exclusive: Water giant gave \$1.4M loan to official

Redding Record Searchlight - Jun 8, 2016

**Westlands Water District** says its 2007 loan to deputy general manager Jason Peltier - now at \$1.57 million with a 0.84 percent annual interest rate - is allowed under agency rules on salary. But experts in governance say the deal raises red flags, not ...

## AP Exclusive: Water giant gave \$1.4M loan to official

Merced Sun-Star - Jun 8, 2016

In this photo taken Wednesday, June 1, 2016 is the Walnut Grove, Calif., home of Jason Peltier, the former deputy general manager of the **Westland Water District**. Peltier received a \$1.4 million loan, from the water district to buy the home in 2007 and ...

## AP Exclusive: Water giant gave \$1.4M loan to official

Modesto Bee - Jun 8, 2016

In this photo taken Wednesday, June 1, 2016 is the Walnut Grove, Calif., home of Jason Peltier, the former deputy general manager of the **Westland Water District**. Peltier received a \$1.4 million loan, from the water district to buy the home in 2007 and ...

## AP Exclusive: **Water** giant gave \$1.4M loan to official

Town Hall - Jun 8, 2016

**Westlands Water District** says its 2007 loan to deputy general manager Jason Peltier — now at \$1.57 million with a 0.84 percent annual interest rate — is allowed under agency rules on salary. But experts in governance say the deal raises red flags ...

## Business Insider - 9 hours ago

### AP Exclusive: **Water** giant gave \$1.4M loan to official

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### Westlands Water District: Questions raised over loan water giant gave to former agency official

In the photo taken, Aug. 12, 2014, Jason Peltier, second from right, the former deputy general manager of the **Westland Water District** attends a water conference held by Gov. Jerry Brown at the Capitol in Sacramento, Calif. Peltier received a \$1.4 ...

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View Slideshow Request to buy this photo AP Photo/Rich Pedroncelli Jason Peltier, second from right, is the former deputy general manager of the **Westland Water District**. Peltier received a \$1.4 million loan from the public water district to buy a home ...

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**Westlands**, which sells **water** to big farmers and other landowners in the country's largest public irrigation **district**, came under scrutiny in March, when federal regulators levied a \$125,000 penalty against it over bookkeeping that a **Westlands'** general ...

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**AP Exclusive:** [Water giant gave \\$1.4M loan to official](#)

SAN FRANCISCO (AP) — A California public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years ...

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[California \*\*water\*\* giant gave \\$1.4M loan to official](#)

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AP Exclusive: [Water giant gave \\$1.4M loan to official](#)

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### Fresno Business Journal - Jun 9, 2016

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### Capital Press - Jun 9, 2016

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AP Exclusive: [Water giant gave \\$1.4M loan to official](#)

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### **LancasterOnline - Jun 9, 2016**

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### **Herald & Review - Jun 9, 2016**

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### **Twin Falls Times-News - Jun 9, 2016**

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**Fremont Tribune - Jun 9, 2016**

**AP Exclusive: [Water giant gave \\$1.4M loan to official](#)**

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**The San Gabriel Valley Tribune - Jun 9, 2016**

**California [water giant gave official \\$1.4 million loan that's still unpaid](#)**

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**Redlands Daily Facts - Jun 9, 2016**

**California [water giant gave official \\$1.4 million loan that's still unpaid](#)**

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**Santa Maria Times (subscription) - Jun 9, 2016**

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**Ledger Independent - Jun 9, 2016**

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**Lincoln Journal Star - Jun 9, 2016**

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**LA Daily News - Jun 9, 2016**

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**San Bernardino County Sun - Jun 9, 2016**

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### **Gloversville Leader-Herald - Jun 9, 2016**

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### **Columbus CEO - Jun 9, 2016**

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### **YourWestValley.com - Jun 9, 2016**

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### **Naples Daily News - Jun 9, 2016**

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### **ReporterNews.com - Jun 9, 2016**

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### **Albuquerque Journal - Jun 9, 2016**

Calif. **water district** gave \$1.4M loan to official for riverfront home

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### **Boston Herald - Jun 9, 2016**

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### **TCPalm - Jun 9, 2016**

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### Kitsap Sun - Jun 9, 2016

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### Daily Mining Gazette - Jun 9, 2016

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### Iron Mountain Daily News - Jun 9, 2016

AP Exclusive: [Water giant gave \\$1.4M loan to official](#)

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### East Bay Times - Jun 9, 2016

[After 'Enron accounting,' California public water district's \\$1.5 million loan for riverfront home goes unpaid](#)

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### San Jose Mercury News - Jun 9, 2016

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**Westlands**, which sells **water** to big farmers and other landowners in the country's largest public irrigation **district**, came under scrutiny in March, when federal regulators levied a \$125,000 penalty against it over bookkeeping that a**Westlands'** general ...

### Lewistown Sentinel - Jun 9, 2016

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### Fredericksburg.com - Jun 9, 2016

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### **Marquette Mining Journal - Jun 9, 2016**

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### **Newsmax - Jun 9, 2016**

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### **Bonner County Daily Bee - Jun 9, 2016**

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### **Naples Herald - Jun 9, 2016**

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12, 2014, Jason Peltier, second from right, the former deputy general manager of the **Westland Water District** attends a water conference held by Gov. Jerry Brown at the Capitol in Sacramento, California. (AP Photo/Rich Pedroncelli). Peltier described ...

### **Artesia Daily Press - Jun 9, 2016**

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### **The Sentinel - Jun 9, 2016**

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### **Brown County Democrat - Jun 9, 2016**

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### **Aurora Sentinel - Jun 9, 2016**



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**Daily Herald - Jun 9, 2016**

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**Sioux City Journal - Jun 9, 2016**

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**Lompoc Record - Jun 9, 2016**

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**Montana Standard - Jun 9, 2016**

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**Arizona Daily Star - Jun 9, 2016**

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**Winona Daily News - Jun 9, 2016**

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**Coos Bay World - Jun 9, 2016**

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### **Corvallis Gazette Times - Jun 9, 2016**

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### **Madison.com - Jun 9, 2016**

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### **Columbus Telegram - Jun 8, 2016**

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### **Standard-Examiner - Jun 9, 2016**

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### **Bluefield Daily Telegraph - Jun 9, 2016**

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### **Benton Evening News - Jun 9, 2016**

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## Beatrice Daily Sun - Jun 9, 2016

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## Blue Springs Examiner - Jun 9, 2016

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## Carmi Times - Jun 9, 2016

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Las Vegas Sun - Jun 9, 2016

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Beaumont Enterprise - Jun 9, 2016

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The State Journal-Register - Jun 9, 2016

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Victorville Daily Press - Jun 9, 2016

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Albany Times Union - Jun 9, 2016

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Hope Star - Jun 9, 2016

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Watertown Public Opinion - Jun 9, 2016

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Myfoxspokane.com - Jun 9, 2016

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Odessa American - Jun 9, 2016

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Chron.com - Jun 9, 2016

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Milton Daily Standard - Jun 9, 2016

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Porterville Recorder - Jun 9, 2016

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The Exponent Telegram (press release) (registration) - Jun 9, 2016

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Greeneville Sun - Jun 9, 2016

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Appeal-Democrat - Jun 9, 2016

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Moulton Advertiser - Jun 9, 2016

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Gettysburg Times - Jun 9, 2016

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Watertown Daily Times - Jun 9, 2016

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Midland Daily News - Jun 9, 2016

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Beloit Daily News - Jun 9, 2016

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Imperial Valley Press - Jun 9, 2016

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Orlando Sentinel - Jun 9, 2016

A California public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years later although the ...

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Uniontown Herald Standard - Jun 9, 2016

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Idaho State Journal - Jun 9, 2016

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Valley morning Star - Jun 9, 2016

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Cache Valley Daily - Jun 9, 2016

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Post-Bulletin - Jun 9, 2016

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Newsbug.info - Jun 9, 2016

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El Paso Inc. - Jun 9, 2016

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Daily American Online - Jun 9, 2016

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Kewanee Star Courier - Jun 9, 2016

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Monterey County Herald - Jun 9, 2016

**Westlands**, which sells **water** to big farmers and other landowners in the country's largest public irrigation **district**, came under scrutiny in March, when federal regulators levied a \$125,000 penalty against it over bookkeeping that a**Westlands'** general ...

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Daily Astorian - Jun 9, 2016

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Monterey County Herald - Jun 9, 2016

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LancasterOnline - Jun 8, 2016

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Beatrice Daily Sun - Jun 8, 2016

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Elko Daily Free Press - Jun 8, 2016

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Napa Valley Register - Jun 8, 2016

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Bloomington Pantagraph - Jun 8, 2016

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Columbus CEO - Jun 8, 2016

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Pontiac Daily Leader - Jun 8, 2016

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Hickory Daily Record - Jun 8, 2016

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The Southern - Jun 8, 2016

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Pratt Tribune - Jun 8, 2016



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Helena Daily World - Jun 8, 2016

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Albany Democrat Herald - Jun 8, 2016

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The Bozeman Daily Chronicle - Jun 8, 2016

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Journal Gazette and Times-Courier - Jun 8, 2016

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Stuttgart Daily Leader - Jun 8, 2016

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Virginian-Pilot - Jun 8, 2016

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nwtimes.com - Jun 8, 2016

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Tuscaloosa News (subscription) - Jun 8, 2016

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Waynesville Daily Guide - Jun 8, 2016

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Casper Star-Tribune Online - Jun 8, 2016

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Herald-Whig - Jun 8, 2016

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Fairfield Citizen - Jun 8, 2016

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Beaumont Enterprise - Jun 8, 2016

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Greensboro News & Record - Jun 8, 2016

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Coldwater Daily Reporter - Jun 8, 2016

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Beauregard Daily News - Jun 8, 2016

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WiscNews - Jun 8, 2016



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NewsOK.com - Jun 8, 2016

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Statesville Record & Landmark - Jun 8, 2016

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Olney Daily Mail - Press Mentor - Jun 8, 2016

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Yahoo Singapore News - Jun 8, 2016

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KLKN - Jun 8, 2016

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McDonough Voice - Jun 8, 2016

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Leavenworth Times - Jun 8, 2016

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Hastings Tribune - Jun 8, 2016

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Lakenewsonline.com - Jun 8, 2016

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Siftings Herald - Jun 8, 2016

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Fox 14 News - Jun 8, 2016

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Dothan Eagle - Jun 8, 2016

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Du Quoin Evening Call - Jun 8, 2016

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The Daily Nonpareil - Jun 8, 2016

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Grand Island Independent - Jun 8, 2016

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GoDanRiver.com - Jun 8, 2016

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KSWO - Jun 8, 2016

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WRCB-TV - Jun 8, 2016

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Crookston Daily Times - Jun 8, 2016

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Sulphur Southwest Daily News - Jun 8, 2016

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KIRO Seattle - Jun 8, 2016

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KOAA.com Colorado Springs and Pueblo News - Jun 8, 2016

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wflx - Jun 8, 2016

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WXOW.com - Jun 8, 2016

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WLNE-TV (ABC6) - Jun 8, 2016

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KXXV News Channel 25 - Jun 8, 2016

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Canton Daily Ledger - Jun 8, 2016

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KSBY San Luis Obispo News - Jun 8, 2016

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Roanoke Times - Jun 8, 2016

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KFBB NewsChannel 5 - Jun 8, 2016

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Waco Tribune-Herald - Jun 8, 2016

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KIII TV3 - Jun 8, 2016

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McPherson Sentinel - Jun 8, 2016

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Yakima Herald-Republic - Jun 8, 2016

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WREX-TV - Jun 8, 2016

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The Daily Progress - Jun 8, 2016

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Live 5 News - Jun 8, 2016

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Lynchburg News and Advance - Jun 8, 2016

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WBRC FOX6 News - WBRC.com - Jun 8, 2016

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SCNow - Jun 8, 2016

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KHQ Right Now - Jun 8, 2016

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WAND - Jun 8, 2016

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WSOC Charlotte - Jun 8, 2016

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KPVI News 6 - Jun 8, 2016

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LongIsland.com - Jun 8, 2016

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Morganton News Herald - Jun 8, 2016

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Houston Chronicle - Jun 8, 2016



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Houston Chronicle - Jun 8, 2016

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Palm Beach Post - Jun 8, 2016

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NBC2 News - Jun 8, 2016

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9&10 News - Jun 8, 2016

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KSWO - Jun 8, 2016

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Bryan-College Station Eagle - Jun 8, 2016

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WBRC FOX6 News - WBRC.com - Jun 8, 2016

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Olean Times Herald - Jun 8, 2016

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WZVN-TV - Jun 8, 2016

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Opelika Auburn News - Jun 8, 2016

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Albany Times Union - Jun 8, 2016

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NTV - Jun 8, 2016

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Times Daily - Jun 8, 2016

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KVOA Tucson News - Jun 8, 2016

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Tulsa World - Jun 8, 2016

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News & Observer - Jun 8, 2016



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Press of Atlantic City - Jun 8, 2016

Records obtained by The Associated Press from **Westlands Water District** detail the 2007 loan, now at less than 1 percent interest. Westlands gave the loan to new executive Jason Peltier when he left the U.S. Interior Department. Peltier left Westlands ...

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KTBS - Jun 8, 2016

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KAKE - Jun 8, 2016

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Chattanooga Times Free Press - Jun 8, 2016

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news9.com KWTW - Jun 8, 2016

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STLtoday.com - Jun 8, 2016

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KTTC - Jun 8, 2016

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The Killeen Daily Herald - Jun 8, 2016

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TBO.com - Jun 8, 2016

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The Journal - Jun 8, 2016

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Your News Now - Jun 8, 2016

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KRIS Corpus Christi News - Jun 8, 2016

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Sentinel-Standard - Jun 8, 2016

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Worcester Telegram - Jun 8, 2016

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Norwich Bulletin - Jun 8, 2016

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The Providence Journal - Jun 8, 2016

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Wayne Independent - Jun 8, 2016

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The Hillsdale Daily News - Jun 8, 2016

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Sturgis Journal - Jun 8, 2016

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SouthCoastToday.com - Jun 8, 2016

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Keyser Mineral Daily News Tribune - Jun 8, 2016

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kwwl.com - Jun 8, 2016

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Brandon Sun - Jun 8, 2016

In the photo taken, Aug. 12, 2014, Jason Peltier, second from right, the former deputy general manager of the**Westland Water District** attends a water conference held by Gov. Jerry Brown at the Capitol in Sacramento, Calif. Peltier received a \$1.4 ...

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KZTV Action 10 News - Jun 8, 2016

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Reading Eagle - Jun 8, 2016

SAN FRANCISCO (AP) — A California public **water district** that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years ...

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Bristol Herald Courier (press release) (blog) - Jun 8, 2016

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WSIL TV - Jun 8, 2016

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Cortez Journal - Jun 8, 2016

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KRGV - Jun 8, 2016

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WSB Atlanta - Jun 8, 2016

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WECT-TV6 - Jun 8, 2016

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Clay Center Dispatch - Jun 8, 2016

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LEX18 Lexington KY News - Jun 8, 2016

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Reading Eagle - Jun 8, 2016

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Idaho Statesman - Jun 8, 2016

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The Bellingham Herald - Jun 8, 2016

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KSL.com - Jun 8, 2016

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The Olympian - Jun 8, 2016

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Newscenter1.tv - Jun 8, 2016

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Hamilton Journal News - Jun 8, 2016

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News965 - Jun 8, 2016

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WLTZ 38 NBC - Jun 8, 2016

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NBC 29 News - Jun 8, 2016

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News On 6 - Jun 8, 2016

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12NewsNow.Com - Jun 8, 2016

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KATC Lafayette News - Jun 8, 2016

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WSB Radio - Jun 8, 2016

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Greenwich Time - Jun 8, 2016

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Myrtle Beach Sun News - Jun 8, 2016

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Money Morning - Jun 8, 2016

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WBOC TV 16 - Jun 8, 2016

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WGEM - Jun 8, 2016

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NewsWest9.com - Jun 8, 2016

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### AP Exclusive: **Water** giant gave \$1.4M loan to official - KAUZ-TV: Newschannel 6 Now | Wichita Falls, TX

KAUZ-TV - Jun 8, 2016

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WBT - Jun 8, 2016

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The Sun Herald - Jun 8, 2016

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San Antonio Express-News (subscription) - Jun 8, 2016

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KRMG - Jun 8, 2016

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WTOP - Jun 8, 2016

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Wichita Eagle - Jun 8, 2016

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Bradenton Herald - Jun 8, 2016

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Belleville News-Democrat - Jun 8, 2016

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Austin American-Statesman - Jun 8, 2016

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mySanAntonio.com - Jun 8, 2016



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The Seattle Times - Jun 8, 2016

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WRAL.com - Jun 8, 2016

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CanadianBusiness.com - Jun 8, 2016

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Springfield News Sun - Jun 8, 2016

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Salon - Jun 8, 2016

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10TV - Jun 8, 2016

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Miami Herald - Jun 8, 2016

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Charlotte Observer - Jun 8, 2016

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Columbus Ledger-Enquirer - Jun 8, 2016

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Island Packet - Jun 8, 2016

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Lexington Herald Leader - Jun 8, 2016

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KTAR.com - Jun 8, 2016

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The Herald - Jun 8, 2016

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WHIO - Jun 8, 2016

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Newser - Jun 8, 2016

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Minneapolis Star Tribune - Jun 8, 2016

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Winnipeg Free Press - Jun 8, 2016

12, 2014, Jason Peltier, second from right, the former deputy general manager of the **Westland Water District** attends a water conference held by Gov. Jerry Brown at the Capitol in Sacramento, Calif. Peltier received a \$1.4 million loan from the water ...

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The Elkhart Truth - Jun 8, 2016

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Atlanta Journal Constitution - Jun 8, 2016

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The Telegraph - Jun 8, 2016

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Tri-City Herald - Jun 8, 2016

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KTVN - Jun 8, 2016

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The San Diego Union-Tribune - Jun 8, 2016

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MyAJC - Jun 8, 2016

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SFGate - Jun 8, 2016

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Chron.com - Jun 8, 2016

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Milwaukee Journal Sentinel - Jun 8, 2016

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San Francisco Chronicle - Jun 8, 2016

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seattlepi.com - Jun 8, 2016

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Pendleton Times-Post - Jun 8, 2016

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ABC News - Jun 8, 2016

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Greenfield Daily Reporter - Jun 8, 2016

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Daily Journal - Jun 8, 2016

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The Republic - Jun 8, 2016

SAN FRANCISCO — A California water district penalized by federal regulators this year gave one of its executives a \$1.4 million home loan. Records obtained by The Associated Press from **Westlands Water District** detail the 2007 loan, now at less than 1 ...

**From:** Johnny Amaral

**Sent:** Monday, June 20, 2016 8:20 AM

**To:** Ryan A. ' 'Smith; Mike Burns; Ed Manning; Denny Rehberg; Dennis Cardoza; David Bernhardt; Catherine Karen; Carolyn Jensen

**Subject:** No calls today...

Sorry for the short notice but I'm tied up this morning until 11 AM. Please email me or call me if you have any questions or anything I need to know going into this week, specifically tomorrow's board meeting

Best,

Johnny Amaral

**Subject:** Conference Call re Legislation

**Location:**(800) [REDACTED]-[REDACTED] pass code [REDACTED]

**Start:**6/30/2016 1:00 PM

**End:**6/30/2016 2:00 PM

**Show Time As:**Tentative

**Recurrence:**(none)

**Meeting Status:**Not yet responded

**Organizer:**Tom Birmingham

**Required Attendees:**'Watts, John (Feinstein)'; 'Bernhardt, David L.'

**Resources:**(800) [REDACTED]-[REDACTED] pass code [REDACTED]

**Subject:** Conference Call re Legislation

**Location:** (800) [REDACTED]-[REDACTED] pass code [REDACTED]

**When:** 2016-06-30, 13:00 - 14:00 GMT -7:00 (60 minutes)

**Organizer:** Tom Birmingham ([tbirmingham@wwddata.com](mailto:tbirmingham@wwddata.com))

**Required Attendees:** Watts, John (Feinstein) ([John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)), Bernhardt, David L. ([DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com))



**From:** Johnny Amaral

**Sent:** Tuesday, July 12, 2016 10:58 AM

**To:** kiel.weaver@mail.house.gov; David Bernhardt

**Subject:** how did it go today?

**From:** Podolak, Chuck (Flake)  
**Sent:** Wednesday, July 13, 2016 1:31 PM  
**To:** Johnny Amaral; tbirmingham@westlandswater.org  
**CC:** dbernhardt@bhfs.com  
**Subject:** Senate committee action on drought

Tom and Johnny,

This morning the Senate Energy and Natural Resources Committee passed Senator Flake's drought bill (S.2902). As you are aware the genesis of the bill was as a compliment or supplement to a California bill such as Senator Feinstein's S.2533. Unfortunately none of the three California bills (S.2533, S.1894, and H.R.2898) in the committee were able to be negotiated onto the agenda. It's not clear right now what the next step is for any of the bills, including S.2902.

We recognize the need for action on California-specific issues and want to work with the California delegation on drought issues. We are in close contact with both the House delegation and Senator Feinstein's office. I hope we can find a way for the Senate to address the water needs throughout the west and I hope to work alongside Westlands on this. Please let me know if there is anything we can do.

Chuck

**Chuck Podolak, PhD** | Natural Resources Policy Advisor  
Office of Senator Jeff Flake  
Russell 413 | Washington, DC 20510 | 202-224-4521  
202-224-4951 (direct) | 202-813-2040 (cell)  
[chuck\\_podolak@flake.senate.gov](mailto:chuck_podolak@flake.senate.gov)

**From:** Bernhardt, David L.

**Sent:** Wednesday, July 13, 2016 1:33 PM

**To:** 'Podolak, Chuck (Flake)'; Johnny Amaral; tbirmingham@westlandswater.org

**Subject:** RE: Senate committee action on drought

Thanks Chuck.

---

**From:** Podolak, Chuck (Flake) [mailto:Chuck\_Podolak@flake.senate.gov]

**Sent:** Wednesday, July 13, 2016 4:31 PM

**To:** Johnny Amaral; tbirmingham@westlandswater.org

**Cc:** Bernhardt, David L.

**Subject:** Senate committee action on drought

Tom and Johnny,

This morning the Senate Energy and Natural Resources Committee passed Senator Flake's drought bill (S.2902). As you are aware the genesis of the bill was as a compliment or supplement to a California bill such as Senator Feinstein's S.2533. Unfortunately none of the three California bills (S.2533, S.1894, and H.R.2898) in the committee were able to be negotiated onto the agenda. It's not clear right now what the next step is for any of the bills, including S.2902.

We recognize the need for action on California-specific issues and want to work with the California delegation on drought issues. We are in close contact with both the House delegation and Senator Feinstein's office. I hope we can find a way for the Senate to address the water needs throughout the west and I hope to work alongside Westlands on this. Please let me know if there is anything we can do.

Chuck

**Chuck Podolak, PhD** | Natural Resources Policy Advisor

Office of Senator Jeff Flake

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**From:** Weaver, Kiel  
**Sent:** Wednesday, July 13, 2016 3:58 PM  
**To:** Johnny Amaral; David Bernhardt  
**Subject:** RE: how did it go today?

sorry for the late response. have been buried since the hearing.

I thought it went well, but I want to get some stuff into the record. I thought the Bee article was fair

---

**From:** Johnny Amaral [jamaral@westlandswater.org]  
**Sent:** Tuesday, July 12, 2016 1:57 PM  
**To:** Weaver, Kiel; David Bernhardt  
**Subject:** how did it go today?

**From:** Tom Birmingham

**Sent:** Thursday, July 14, 2016 6:50 PM

**To:** 'Jeff Sutton'

**CC:** 'Weaver, Kiel'; 'Bernhardt, David L.'; 'Akroyd, Rebecca'

**Subject:** Question for the Record and Response

**Attachments:** Question for Jeff Sutton.docx; Ltr to Chairman Fleming re Huffman's Remarks.docx

Jeff,

Attached is a draft question that could be posed to you by Mr. LaMalfa and a draft reply. By copying Rebecca Akroyd on this email, I am requesting that she cite check the letter to ensure the letter accurately quotes the NAS report and the biological opinion judicial decisions. She will forward corrections directly to you.

Thank you to agreeing to handle this matter. I hope the documents are helpful.

Tom

Question for Jeff Sutton

During the July 12, 2016 Subcommittee on Water, Power and Oceans hearing on California Water Supply Under Threat by Conflicting Federal Agencies Ranking Member Jared Huffman made the following statement:

We, the other problem is we keep making the same old claims that have been refuted and debunked time-and-again. One of them is that these biological opinions and the flow parameters that are driven by them are somehow not based on science. Now, I'll ask our witnesses from the Fish and Wildlife Service and the National Marine Fisheries Service quickly about that. These opinions were challenged in court, correct, and they were upheld by the federal courts, correct? Then at the behest of those who have continued to criticize them there was an independent peer review by none other than the National Academy of Science [sic], correct? And they were upheld as being scientifically justified by the highest peer review body in the United States of America, correct? I would hope that we can move beyond continuing to misrepresent the facts on this important issue. . . .

Do you have a response to this comment?

July \_\_, 2016

The Honorable John Fleming  
Chairman, Subcommittee on Water, Power and Oceans  
1324 Longworth House Office Building  
Washington, D.C. 20515

RE: Response to Question for the Record

Dear Chairman Fleming:

I have been asked to respond to comments made by Ranking Member Jared Huffman during the Subcommittee on Water, Power and Oceans July 12, 2016, hearing on California Water Supply Under Threat by Conflicting Federal Agencies. During that hearing, Mr. Huffman stated:

We, the other problem is we keep making the same old claims that have been refuted and debunked time-and-again. One of them is that these biological opinions and the flow parameters that are driven by them are somehow not based on science. Now, I'll ask our witnesses from the Fish and Wildlife Service and the National Marine Fisheries Service quickly about that. These opinions were challenged in court, correct, and they were upheld by the federal courts, correct? Then at the behest of those who have continued to criticize them there was an independent peer review by none other than the National Academy of Science [sic], correct? And they were upheld as being scientifically justified by the highest peer review body in the United States of America, correct? I would hope that we can move beyond continuing to misrepresent the facts on this important issue. . . .

If by this statement Mr. Huffman meant to imply that the science concerning the efficacy of the specific flow parameters "driven" by the biological opinions is settled, he would be wrong. Indeed, the National Academy of Sciences raised significant questions about the scientific underpinnings of these flow parameters.

In the March 19, 2010, National Academy of Sciences press release accompanying release of the report on its review of the biological opinions, the National Academy of Sciences stated:

Most of the actions proposed by two federal agencies to reduce water diversions in the California Bay-Delta in order to protect endangered and

threatened fish species are "scientifically justified," but the basis for the specific environmental triggers that would indicate when water diversions should be reduced is less well-supported by scientific analyses, says a new report from the National Research Council that was requested by Congress and the U.S. Department of the Interior. (Emphasis added.)

Indeed, the National Academy of Sciences report, entitled "A Scientific Assessment of Alternatives for Reducing Water Management Effects On Threatened and Endangered Fishes in California's Bay Delta," ("NAS Report") to which Mr. Huffman referred is replete with criticisms about the scientific basis for the specific flow parameters driven by the biological opinions. For instance, with respect to the action in the 2008 Delta smelt biological opinion to manage the contour line of 2 parts per thousand salinity, called X2, no farther upstream (east) of the Golden Gate Bridge than 74 kilometers in the fall of wet years and 81 kilometers in the fall of moderately wet years, the NAS Report stated:

The controversy about [this Action] arises from the poor and sometimes confounding relationship between indirect measures of delta smelt populations (indices) and X2. Although there is evidence that the position of X2 affects the distribution of smelt, the weak statistical relationship between the location of X2 and the size of smelt populations makes the justification for this action difficult to understand. In addition, although the position of X2 is correlated with the distribution of salinity and turbidity regimes, the relationship of that distribution and smelt abundance indices is unclear. The X2 action is conceptually sound in that to the degree that the amount of habitat available for smelt limits their abundance, the provision of more or better habitat would be helpful. However, the derivation of the details of this action lacks rigor. The action is based on a series of linked statistical analyses (e.g., the relationship of presence/absence data to environmental variables, the relationship of environmental variables to habitat, the relationship of habitat to X2, the relationship of X2 to smelt abundance). Each step of this logical train of relationships is uncertain. The relationships are correlative with substantial variance left unexplained at each step, yet the analyses do not carry the uncertainty at each step to the next step. The action also may have high water requirements and may adversely affect salmon and steelhead under some conditions. NAS Report, at 4 (emphasis added).

This criticism of the scientific basis for imposing an X2 at a particular location during fall months of wet and moderately wet years is particularly relevant to the subject of the Subcommittee's July 12 hearing because the summer Delta outflow proposal about which the Subcommittee heard testimony is designed to achieve a contour line of 2 parts per thousand salinity at a particular location during the summer months.



The criticisms expressed by the NAS Report about the scientific basis for other specific flow parameters and pumping reductions driven by the biological opinions are too numerous to repeat in this letter; however, a few highlights of these criticism are:

The concept of reducing [Old and Middle Rivers] negative flows to reduce mortality of smelt at the [State Water Project] and [Central Valley Project] facilities is scientifically justified. However, there is substantial uncertainty regarding the amount of flow that should trigger a reduction in exports. In other words, the specific choice of the negative flow threshold for initiating the RPA is less clearly supported by scientific analyses.... There clearly is a relationship between negative OMR flows and mortality of smelt at the pumps, but the data do not permit a confident identification of the threshold values to use in the action, and they do not permit a confident assessment of the benefits to the population of the action. NAS Report, at 3-4 (emphasis added).

The historical distribution of smelt on which the relationship with [Old and Middle Rivers] flows was established no longer exists. Delta smelt are now sparsely distributed in the central and southern delta and pump salvage also has been extremely low, less than 4% of the 50-year average index. Since 2005, a significant portion of the remaining smelt population, 42% (Sommer et al., 2009), is in the Cache Slough complex to the north and is therefore largely isolated from the central delta. These changes in the distribution of delta smelt increase the uncertainty surrounding current estimates of the population and its likely response to alterations in delta hydraulics, and until the numbers of smelt rise closer towards the pre-2005 levels, they do not provide a reliable index for incorporation into models for the effects of pumping on smelt salvage.... There clearly is a relationship between OMR flows and salvage rates, but the available data do not permit a confident identification of the threshold values to use in the action, and they do not permit a confident assessment of the benefits to the population of the action. NAS Report at 38-39 (emphasis added).

The controversy [surrounding Action IV.2.1 in the salmonid biological opinion] lies in the effectiveness of the component of this action that reduces water exports from the delta. The effectiveness of reducing exports to improve steelhead smolt survival is less certain, in part because with the VAMP (Vernalis Adaptive Management Plan) increase flows and reduce exports are combined, and in part because steelhead smolts are larger and stronger swimmers than Chinook salmon smolts. Furthermore, it is not clear in the biological opinion how managing exports for this purpose would be integrated with export management for other actions. The choice of a 4:1 ratio of net flows to exports appears to be the result of coordinated discussions among the interested parties. Given the weak influence of exports in all survival relationships (Newman, 2008), continued negotiation offers opportunities to reduce water use in this

specific action without great risk to salmon. Further analysis of VAMP data also offers an opportunity to help clarify the issue. The committee concludes that the rationale for increasing San Joaquin River flows has a stronger foundation than the prescribed action of concurrently managing inflows and exports. NAS Report at 45 (emphasis added).

Again, the criticisms of the scientific methodologies used by the Fish and Wildlife Service and the National Marine Fisheries Service to develop the biological opinions and of the specific flow parameters prescribed by the biological opinions are too numerous to repeat here. For your convenience, a copy of the NAS Report is attached, and I urge the Subcommittee to review this report because it belies Mr. Huffman's assertion that the National Academy of Sciences found that the specific flow parameters "driven" by the biological opinions are scientifically justified.

Moreover, it the environmental triggers and the specific flow parameters that are of greatest significance for human uses of the subject water. For example, the Delta smelt biological opinion prescribes that reverse flow in Old and Middle Rivers will be managed during the January 1 – June 30 period at rates between -1250 cubic feet per second and -5000 cubic feet per second. The difference in terms of water supply for the Central Valley Project and the State Water Project between managing reverse flow at -1250 cubic feet per second versus managing reverse flow at -5000 cubic feet per second during this period, in an average hydrologic year, would be more than one-million acre-feet of water. About this action, the NAS Report stated, "there is substantial uncertainty regarding the amount of flow that should trigger a reduction in exports. In other words, the specific choice of the negative flow threshold for initiating the RPA is less clearly supported by scientific analyses," and "the data do not permit a confident identification of the threshold values to use in the action, and they do not permit a confident assessment of the benefits to the population of the action." NAS Report at 3-4.

Mr. Huffman is correct that the biological opinions were upheld by the federal courts. But these courts were not necessarily more kind when assessing the scientific justification for the flow parameters specified by the biological opinions. After lengthy evidentiary hearings concerning the scientific justification for the biological opinions and after reviewing the administrative records for the biological opinions, the United States District Court for the Eastern District of California entered judgments that found the biological opinions were arbitrary and capricious and not supported by the best available science. See *San Luis & Delta-Mendota Water Authority v. Salazar*, 760 F. Supp. 2d 855 (E.D. Cal. 2010) and *Consolidated Salmonid Cases*, 791 F. Supp. 2d 802 (E.D. Cal. 2011). In its decisions, the District Court was highly critical of the science on which the Fish and Wildlife and the National Marine Fisheries Service relied in preparing the biological opinions. See *San Luis & Delta-Mendota Water Authority v. Salazar*, 760 F. Supp. 2d at 885, 890, 895, 913 and 922. See also *Consolidated Salmonid Cases*, 791 F. Supp. 2d at 827, 858, 898 and 909. The District Court's judgments were reversed by the United States Court of Appeals for the Ninth Circuit, but not necessarily because the appellate court disagreed with the District Court's findings. Rather the

Ninth Circuit Court of Appeals found that the District Court had improperly substituted its own judgment for that of the agency biologists who had prepared the biological opinions, who are entitled to deference. See *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581, 620-626 (9<sup>th</sup> Cir. 2014); see also *San Luis & Delta-Mendota Water Authority v. Locke*, 776 F.3d 971, 996 (9<sup>th</sup> Cir. 2014). Indeed, with respect to the Delta smelt biological opinion, the Ninth Circuit Court of Appeals characterized the biological opinion as a “bit of a mess. And not just a little bit of a mess, but, at more than 400 pages, a big bit of a mess.” *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d at 604.

One portion of the Ninth Circuit Court of Appeals’ decisions that Mr. Huffman chooses to ignore is that which suggests it is up to Congress to address the issues that created by these biological opinions. In its decision related to the Delta smelt biological opinion, the appellate court stated:

We recognize the enormous practical implications of this decision. But the consequences were prescribed when Congress determined that “these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” 16 U.S.C. § 1531(a)(3). As the Supreme Court observed in *Tennessee Valley Authority v. Hill*: “It may seem curious to some that the survival of a relatively small number of three-inch fish ... would require the permanent halting of a virtually completed dam,” but “the explicit provisions of the Endangered Species Act require precisely that result.” 437 U.S. 153, 172–73, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978). Such species have been “afforded the highest of priorities,” by Congress, even if it means “the sacrifice of the anticipated benefits of the project and of many millions of dollars in public funds.” *Id.* at 174, 98 S.Ct. 2279 (footnote omitted). The law prohibits us from making “such fine utilitarian calculations” to balance the smelt’s interests against the interests of the citizens of California. *Id.* at 187, 98 S.Ct. 2279. Consequently, any other “[r]esolution of these fundamental policy questions” about the allocation of water resources in California “lies ... with Congress and the agencies to which Congress has delegated authority, as well as with state legislatures and, ultimately, the populace as a whole.” *Baltimore Gas & Elec.*, 462 U.S. at 97, 103 S.Ct. 2246.

It is for the reasons stated by the Ninth Circuit Court of Appeals, that the resolution of fundamental policy questions about the allocation of water resources lies with Congress, that the Tehama-Colusa Canal Authority has supported efforts by Members of the House of Representatives to enact legislation that would provide a more reasonable balance between implementation of the biological opinions and water supplies.

Thank you permitting me to testify at this important hearing and for the time that the Subcommittee has devoted to this critical issue.



**From:** Tom Birmingham  
**Sent:** Thursday, July 14, 2016 7:25 PM  
**To:** 'Jeff Sutton'  
**CC:** 'Weaver, Kiel'; 'Bernhardt, David L.'; 'Akroyd, Rebecca'  
**Subject:** NAS Report  
**Attachments:** NRC BiOp Review Report 3\_19\_10.pdf

Jeff,

For your convenience, attached is a copy of the NAS report referenced in the draft letter.

Again, thank you.

Tom



**A Scientific Assessment of Alternatives for  
Reducing Water Management Effects on Threatened  
and Endangered Fishes in California's Bay Delta**  
Committee on Sustainable Water and Environmental  
Management in the California Bay-Delta; National  
Research Council

ISBN: 0-309-12803-X, 104 pages, 6 x 9, (2010)

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**A Scientific Assessment of Alternatives for Reducing Water  
Management Effects on Threatened and Endangered Fishes in  
California's Bay Delta**

**Committee on Sustainable Water and Environmental Management  
in the California Bay-Delta**

Water Science and Technology Board

Ocean Studies Board

Division on Earth and Life Studies

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## COMMITTEE ON SUSTAINABLE WATER AND ENVIRONMENTAL MANAGEMENT IN THE CALIFORNIA BAY-DELTA<sup>\*</sup>

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ELLEN DE GUZMAN, Research Associate

HEATHER CHIARELLO, Senior Program Assistant

---

<sup>\*</sup> Biographical information for committee members is in Appendix E. This project was organized and overseen by the NRC's Water Science and Technology Board (lead) and Ocean Studies Board, whose rosters are in Appendixes B and C, respectively.

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## Preface

California, like many states, faces challenges related to water. Much of the state is too dry to support many human activities, such as municipal and industrial water use and irrigated agriculture, without supplementing the natural water supply. It has done this through an extensive series of engineering projects that include reservoirs, canals, levees, and pumps, largely to move water from the more humid north to the more arid and densely populated south. Much of California's natural surface-water supply flows into and through the Sacramento and San Joaquin watersheds into California's Bay-Delta, and from there through San Francisco Bay into the ocean. The delta itself is a biologically diverse estuarine ecosystem, and is the main point of diversion for water that is transported to the south.

As California's population and economic activity have increased, along with water diversions from the delta, conflicts over various water uses have increased as well, especially surrounding the bay-delta. Those conflicts have been brought to a head by restrictions on water diversions that have been required by two biological opinions, one by the U.S. Fish and Wildlife Service, covering delta smelt, and one by the National Marine Fisheries Service, covering salmon, steelhead, and sturgeon, to protect those fishes, which are listed as threatened or endangered under the federal Endangered Species Act. In addition, several recent dry years have exacerbated the situation. Conflicts over water are not new in California, but the current conflicts over the bay-delta appear to be unprecedented in their scale. Few parts of the state are unaffected by what happens to delta water.

Protecting all the listed species and preserving existing and projected uses of the region's water is a serious challenge. The complexity of the problem and the difficulty of identifying solutions have been highlighted by a plethora of scientific publications and arguments, in which many qualified and distinguished experts have reached differing conclusions. Nobody disagrees that engineering changes; the introduction of many exotic species, the addition of contaminants to the system, and the general effects of an increasing human population have contributed to the fishes' declines. There are, however, disagreements about the relative contributions of those factors and the appropriate remedies for them. This is the context in which the National Research Council was asked by Congress and the Department of the Interior to help resolve the issue by evaluating the scientific bases of the biological opinions. In response, the NRC appointed a special committee of experts to carry out a complex and challenging study in two phases.

In its first phase, the committee was tasked to focus on the scientific bases of the reasonable and prudent alternatives (RPAs) in the two biological opinions. The committee also assessed whether the RPAs might be in conflict with one another, as well as whether other options might be available that would protect the fishes with lesser impacts on other water uses. Finally, we were asked to consider the effects of "other stressors" on the fishes if sufficient time were available. The results of this first-phase analysis are the subject of this report. The committee did consider other stressors, but it did not evaluate them in depth. They will be more thoroughly addressed in a second report, scheduled to be published late in 2011, which will focus on broader

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issues surrounding attempts to provide more sustainable water supplies and to improve the ecological sustainability of the delta, including consideration of what ecological goals might be attainable.

The committee met in Davis, California for five days in January 2010. The committee heard presentations from representatives of federal and state agencies and a variety of other experts, and from members of several stakeholder groups and the public (see Appendix D). The information gathering sessions of this meeting were open to the public and widely advertised. The committee sought to hear from as many groups and individuals as possible within the time constraints. All speakers, guests, and members of the public were encouraged to provide written comments during and after the meeting. All presentations and written materials submitted were considered by the committee as time allowed. The committee thanks all the individuals who provided information.

This report was reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise in accordance with the procedures approved by the NRC's Report Review Committee. The purpose of this independent review is to provide candid and critical comments that will assist the NRC in making its published report as sound as possible, and to ensure that the report meets NRC institutional standards for objectivity, evidence, and responsiveness to the study charge. The review comments and draft manuscript remain confidential to protect the integrity of the deliberative process.

We thank the following for their reviews of this report: Joan G. Ehrenfeld, Rutgers University; Mary C. Fabrizio, Virginia Institute of Marine Science; Peter Gleick, Pacific Institute; William P. Horn, Birch, Horton, Bittner & Cherot; D. Peter Loucks, Cornell University; Jay Lund, University of California, Davis; Tammy Newcomb, Michigan Department of Natural Resources; and Andrew A. Rosenberg, Conservation International.

Although these reviewers provided constructive comments and suggestions, they were not asked to endorse the report's conclusions and recommendations, nor did they see the final draft of the report before its release. The review of this report was overseen by Michael Kavanaugh, Malcolm Pirnie, Inc., who was appointed by the NRC's Report Review Committee and by Leo Eisel, Brown and Caldwell, who was appointed by the NRC's Division on Earth and Life Studies. They were responsible for ensuring that an independent examination of this report was conducted in accordance with NRC institutional procedures and that all review comments received full consideration. Responsibility for this report's final contents rests entirely with the authoring committee and the NRC.

I am enormously grateful to my committee colleagues for their diligence, enthusiasm, persistence, and hard work. The schedule for the preparation of this report was short, and without everyone's engagement, it could not have been completed. I also am grateful to David Policansky, Stephen Parker, Laura Helsabeck, Heather Chiarello, Ellen De Guzman, and Susan Roberts of the NRC staff for their efforts in facilitating the committee's meeting and for their work in helping to get this report completed on schedule in the face of historic snowstorms.

California will continue to face great challenges in managing, allocating, and using water, including managing California's Bay Delta. We hope the committee's reports can help in that difficult process.

Robert J. Huggett  
*Chair*

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## Acronyms and Abbreviations

AF	Acre-feet
BA	Biological Assessment
BO	Biological Opinion
(C)DFG	California Department of Fish and Game
(C)DWR	California Department of Water Resources
C.F.R.	Code of Federal Regulations
Cir	Circuit Court (federal system)
CVP	Central Valley Project
CVPIA	Central Valley Project Improvement Act
DCC	Delta Cross Channel
DOI	(U.S.) Department of the Interior
DSM2	Delta Simulation Model II
EDT	Ecosystem Diagnosis and Treatment
ESA	Endangered Species Act
EWA	Environmental Water Account
FMT	Fall Midwater Trawl (survey)
FWS	(U.S.) Fish and Wildlife Service
HORB	Head of Old River Barrier
MAF	Million acre-feet
M&I	Municipal and Industrial
NAS	National Academy of Sciences
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NRC	National Research Council
OCAP	Operations Criteria And Plan
OMR	Old and Middle River
OSB	Ocean Studies Board of the NRC
PTM	Particle-Tracking Model
RBDD	Red Bluff Diversion Dam
RPA	Reasonable and Prudent Alternative
SWP	State Water Project
TAF	Thousand acre-feet
USBR	United States Bureau of Reclamation
U.S.C.	United States Code
USGS	United States Geological Survey
VAMP	Vernalis Adaptive Management Plan
WSTB	Water Science and Technology Board of the NRC
X2	Contour line of salinity 2

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## Summary

California's Bay-Delta estuary is a biologically diverse estuarine ecosystem that plays a central role in the distribution of California's water from the state's wetter northern regions to its southern, arid, and populous cities and agricultural areas. In addition to its ecological functioning and the ecosystem services it provides, there are numerous withdrawals of freshwater from the delta, the largest being pumping stations that divert water into the federal Central Valley Project (CVP) and the State Water Project (SWP), primarily for agriculture and metropolitan areas. Most former wetland and marsh areas of the delta have been drained for agriculture, and are protected by an aging collection of levees. Some of those areas also contain small urban settlements.

This hydrologic and engineered system has met the diverse water-related needs of Californians for decades. But operation of the engineered system, along with the effects of an increasing population of humans and their activities, has substantially altered the ecosystem. These ecosystem changes have contributed to changes in the abundance, distribution, and composition of species in the delta, including the decline of many native species and the successful establishment of many species not native to the region.

Recently, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) issued biological opinions under the federal Endangered Species Act (ESA) that required changes ("reasonable and prudent alternatives," or RPAs) in water operations and related actions to avoid jeopardizing the continued existence and potential for recovery of delta smelt, winter-run and fall-run Chinook salmon, Central Valley steelhead, and green sturgeon. Those changes have reduced the amount of water available for other uses, and the tensions that resulted have been exacerbated by recent dry years.

The RPAs are divided into many separate actions. The RPA in the FWS opinion, divided into 6 actions, applies to delta smelt and thus focuses primarily on managing flow regimes to reduce entrainment of smelt and on extent of suitable water conditions in the delta, as well as on construction or restoration of habitat. The NMFS RPA, divided into 5 actions with a total of 72 subsidiary actions, applies to the requirements of Chinook salmon, steelhead, and green sturgeon in the delta and farther upstream. In addition to its focus on flow regimes and passage, it includes purchasing water to enhance in-stream flow, habitat restoration, a new study of acoustic-tagged steelhead, and development of hatchery genetics management plans. This committee did not evaluate all 78 actions and subsidiary actions in the two RPAs in detail. It spent most of its time on the elements of the RPAs that have the greatest potential to affect water diversions. It also spent time on elements whose scientific justifications appear to raise some questions.

Protecting all the listed species, as required by the ESA, while simultaneously trying to minimize impacts on existing and projected uses of the region's water, is a serious challenge. In addition, many anthropogenic and other factors, including pollutants; introduced species; and engineered structures such as dams, canals, levees, gates, and pumps adversely affect the fishes in the region, but they are not under the direct control of the CVP or the SWP, and thus are not subjects of the biological opinions.

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The complexity of the problem of the decline of the listed species and the difficulty of identifying viable solutions have led to disagreements, including concerns that some of the actions in the RPAs might be ineffective and might cause harm and economic disruptions to water users, and that some of the actions specified in the RPAs to help one or more of the listed species might harm others. In addition, some have suggested that the agencies might be able to meet their legal obligation to protect species with less economic disruptions to other water users. Those concerns led the Department of the Interior and Congress to ask for advice from the National Research Council (NRC), which appointed a special committee of experts to carry out this study.

## THE COMMITTEE'S CHARGE

The committee's charge includes the following tasks (the full statement of task is in Appendix A).

The committee was asked to undertake two main projects over a term of two years resulting in two reports. The first report, prepared on a very short timeline, was to address scientific questions, assumptions, and conclusions underlying water-management alternatives (i.e., the RPAs) in the two biological opinions mentioned above, and this is where the committee focused most of its attention. In addition, three specific issues were to be addressed. First, are there any "reasonable and prudent alternatives" (RPAs) that, based on the best available scientific data and analysis, would provide equal or greater protection for the listed species and their habitat while having lesser impacts to other water uses than those adopted in the biological opinions? Second, are there provisions in the biological opinions to resolve the potential for actions that would benefit one listed species while causing negative impacts on another? And finally, to the extent that time permits, the committee was asked to consider the effects of other stressors (e.g., pesticides, ammonia discharges, invasive species) on federally listed and other at-risk species in the Bay-Delta. The committee's second report, due in late 2011, will address how to most effectively incorporate science and adaptive management concepts into holistic programs for management and restoration of the Bay-Delta.

The committee's charge was to provide a scientific evaluation, not a legal one, and that is what the committee did. **Nothing in this report should be interpreted as a legal judgment as to whether the agencies have met their legal requirements under the ESA.** The committee's report is intended to provide a scientific evaluation of agency actions, to help refine them, and to help the general attempt to better understand the dynamics of the delta ecosystem, including the listed fishes.

## THE COMMITTEE'S PRINCIPAL CONCLUSIONS

### Context

The California Bay-Delta is a system that has undergone significant anthropogenic changes for more than a century. Those changes include water withdrawals; draining of wetlands; introduction of many nonnative species of plants and animals, some deliberate; construction of canals, gates, marinas, roads, levees, pumps, dams, and other structures that affect the hydrology of the system; the damming of almost all the major rivers and tributaries to the system, which also

has altered the seasonal flow regime and other hydrologic aspects of the system; and the release of contaminants, pollutants, and nutrients into the system as a result of the above changes and the increase of agriculture, industrial and residential development, and other human activities. All these changes have affected the distribution, abundance, and composition of species in the delta, some of which have increased dramatically and some, including the species listed under the Endangered Species Act (Chinook salmon, delta smelt, steelhead, and green sturgeon), which have declined precipitously. The biological opinions with their associated RPAs that the committee has reviewed relate only to proposed changes in operations of the CVP and the SWP in the delta and methods to reduce the adverse effects on the listed species of those changes. Some restrictions on CVP and SWP water diversions have been initiated to protect the listed fish species, but so far have not produced measurable effects in slowing their declines.

**The committee concludes that reversing or even slowing the declines of the listed species cannot be accomplished immediately.** Even the best-targeted methods of reversing the fish declines will need time to take effect amid changing environmental conditions such as multi-year droughts and continued pressures on the system from other human-caused stresses. Especially for fishes whose populations are very low already, the effects of any actions will be difficult to detect at first, and detecting them will be made more difficult by the effects of other environmental changes and uncertainties inherent in sampling small populations.

### The FWS Biological Opinion and RPA

The committee considered the six actions contained within the RPA, most of which were judged to have a sound conceptual basis. The committee then focused on the RPA actions that involved Old and Middle River (OMR) flows, the management of the mean position of the contour where salinity is 2<sup>1</sup> (X2), and the creation or restoration of tidal habitat for smelt. The first two actions involve significant requirements for water; the third does not.

The management of OMR flows is predicated on the concept that pumping of water for export from the south delta creates net negative (upstream) flows, averaged over the tidal cycle, that cause delta smelt (and some juvenile salmon) to experience increased mortality in the south delta, especially in winter. The RPA action limits the net OMR flows to levels that depend on conditions during this period, with a variety of environmental triggers and adaptive-management procedures. **Although there are scientifically based arguments that raise legitimate questions about this action, the committee concludes that until better monitoring data and comprehensive life-cycle models are available, it is scientifically reasonable to conclude that high negative OMR flows in winter probably adversely affect smelt populations. Thus, the concept of reducing OMR negative flows to reduce mortality of smelt at the SWP and CVP facilities is scientifically justified.**

However, there is substantial uncertainty regarding the amount of flow that should trigger a reduction in exports. In other words, the specific choice of the negative flow threshold for initiating the RPA is less clearly supported by scientific analyses. The biological benefits and the water requirements of this action are likely to be sensitive to the precise values of trigger and threshold values. There clearly is a relationship between negative OMR flows and mortality of smelt at the pumps, but the data do not permit a confident identification of the threshold values to

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<sup>1</sup> This is often expressed as a concentration, e.g., "2 parts per thousand," but more recently it has been expressed as a ratio of electrical conductivities, hence it has no units.

use in the action, and they do not permit a confident assessment of the benefits to the population of the action. As a result, the implementation of this action needs to be accompanied by careful monitoring, adaptive management, and additional analyses that permit regular review and adjustment of strategies as knowledge improves.

The management of the mean position of X2 during the fall (Action 4 of the FWS RPA) is based on observations that relate smelt use of spawning habitat with various salinity regimes. X2 is interpreted by the agencies not as a single line, but rather as an indicator of the spatial pattern of salinity in the delta and thus as indicative of the extent of habitat favorable for delta smelt.

The relationships among smelt abundance, habitat extent, and the mean position of X2 as an indicator of available habitat are complex. The controversy about the action arises from the poor and sometimes confounding relationship between indirect measures of delta smelt populations (indices) and X2. Although there is evidence that the position of X2 affects the distribution of smelt, the weak statistical relationship between the location of X2 and the size of smelt populations makes the justification for this action difficult to understand. In addition, although the position of X2 is correlated with the distribution of salinity and turbidity regimes, the relationship of that distribution and smelt abundance indices is unclear. The X2 action is conceptually sound in that to the degree that the amount of habitat available for smelt limits their abundance, the provision of more or better habitat would be helpful. However, the derivation of the details of this action lacks rigor. The action is based on a series of linked statistical analyses (e.g., the relationship of presence/absence data to environmental variables, the relationship of environmental variables to habitat, the relationship of habitat to X2, the relationship of X2 to smelt abundance). Each step of this logical train of relationships is uncertain. The relationships are correlative with substantial variance left unexplained at each step, yet the analyses do not carry the uncertainty at each step to the next step. The action also may have high water requirements and may adversely affect salmon and steelhead under some conditions. **As a result, the committee concludes that how specific X2 targets were chosen and their likely beneficial effects need further clarification. It also is critical that the adaptive-management requirements included in the RPA be implemented in light of the uncertainty about the biological effectiveness of the action and its possibly high water requirements.**

The tidal habitat management action in the RPA requires creation or restoration of 8,000 acres of intertidal and subtidal habitat in the delta and in Suisun Marsh. This action has not been controversial because it does not affect other water users. **The committee finds that the conceptual foundation for this action (Action 6) is weak because the relationship between tidal habitats and food availability for smelt is poorly understood. The details of its implementation are not fully justified in the biological opinion. The committee recommends that this action be implemented in phases, with the first phase to include the development of an implementation and adaptive management plan (similar to the approach used for the floodplain habitat action in the NOAA biological opinion), but also to explicitly consider the sustainability of the resulting habitats, especially those dependent on emergent vegetation, in the face of expected sea-level rise.** In addition, there should be consideration of the types and amounts of tidal habitats necessary to produce the expected outcomes and how they can be achieved and sustained in the long term. The committee supports the monitoring program referred to in Action 6, and appropriate adaptive management triggers and actions.

## The NMFS Biological Opinion and RPA

The NMFS RPA for salmon, steelhead, and green sturgeon is a broad complex of diverse actions spanning three habitat realms: tributary watersheds, the mainstem Sacramento and San Joaquin Rivers, and the delta. **On balance, the committee concludes that the actions, which are primarily crafted to improve life-stage-specific survival rates for salmon and steelhead, with the recognition that the benefits also will accrue to sturgeon, are scientifically justified.** The strategies underpinning many of the individual actions are generally well supported by more than a decade of conceptual model building about the requirements of salmonids in the region, although the extent to which the intended responses are likely to be realized is not always clearly addressed in the RPA. Given the absence of a transparent, quantitative framework for analyzing the effects of individual and collective actions, it is difficult to make definitive statements regarding the merits of such a complex RPA. Indeed, absent such an analysis, the controversial aspects of some of the RPA actions could detract from the merits of the rest of the RPA.

**In general, as described in detail in Chapter 6, the committee concludes that although most, if not all, of the actions in this RPA had a sound conceptual basis, the biological benefits and water requirements of several of the actions are, as with the delta smelt actions, likely quite sensitive to the specific triggers, thresholds, and flows specified. As a result, the committee recommends that the specific triggers, thresholds, and flows receive additional evaluation that is integrated with the analyses of similar actions for delta smelt.**

**In particular, the committee concludes that it is difficult to ascertain to what extent the collective watershed and tributary actions will appreciably improve survival within the watershed or throughout the entire river system. The committee concludes that the actions to improve mainstem passage for salmonids and sturgeon, in particular those concerning the Red Bluff Diversion Dam, are well justified scientifically. The committee recommends some kind of quantitative assessment framework for assessing survival be developed and implemented.**

The management of OMR flows to reduce entrainment mortality of salmon smolts is similar in concept to the smelt OMR action, and like that action, **the committee concludes that its conceptual basis is scientifically justified, but the scientific support for specific flow targets is less certain. Uncertainty in the effect of the triggers should be reduced, and more-flexible triggers that might require less water should be evaluated.**

Another set of actions in this RPA focuses on managing exports and flows in the San Joaquin River to benefit outmigrating steelhead smolts. The actions are intended to reduce the smolts' vulnerability to entrainment into the channels of the south delta and the pumps by increasing the inflow-to-export ratio of water in the San Joaquin River. It thus has two components: reducing exports and increasing San Joaquin River inflows into the delta. **The committee concludes that the rationale for increasing San Joaquin River flows has a stronger foundation than does the prescribed export action. We further conclude that the action involving a 6-year study of smolt survival would provide useful insight into the effectiveness of the actions as a long-term solution.**

The final two actions considered here were improving the migratory passage of salmon and sturgeon through the Yolo Bypass and the creation of additional floodplain lands to provide additional rearing habitat for juvenile salmon. **The committee concludes that both actions are scientifically justified, but the implications for the system as a whole of routing additional flows through the Yolo Bypass for the system were not clearly analyzed.** In particular, the

consequences of the action for Sacramento River flows and for the potential mobilization of mercury were not clearly described.

### **Other Possible RPAs**

The committee's charge requires the identification, if possible, of additional potential RPAs that might have the potential to provide equal or greater protection to the fishes than the current RPAs while costing less in terms of water availability for other uses. **The committee considered a variety of possible actions not in the RPAs (see Chapter 6), and concluded that none of them had received sufficient documentation or evaluation to be confident at present that any of them would have the potential to provide equal or greater protections for the species while requiring less disruption of delta water diversions.**

### **Other Stressors**

**Based on the evidence the committee has reviewed, the committee agreed that the adverse effects of all the other stressors on the listed fishes are potentially large.** Time did not permit full exploration of the issue in this first report, but examples of how such stressors may affect the fishes are described. The committee will explore this issue more thoroughly in its second report.

### **Modeling**

The committee reviewed the models the agencies used to understand the basis for the resource agencies' jeopardy opinion and to determine to what degree they used the models in developing the RPAs. **The committee concluded that as far as they went, despite flaws, the individual models were scientifically justified, but that they needed improvements and that they did not go far enough toward an integrated analysis of the RPAs. Thus the committee concluded that improving the models by making them more realistic and by better matching the scale of their outputs to the scale of the actions, and by extending the modeling framework to be more comprehensive and to include features such as fish life cycles would improve the agencies' abilities to assess risks to the fishes, to fine-tune various actions, and to predict the effects of the actions.**

### **Potential Conflicts Between RPAs and Integration of RPAs**

**The committee concludes that the RPAs lack an integrated quantitative analytical framework that ties the various actions together within species, between smelt and salmonid species, and across the watershed. This type of systematic, formalized analysis, although likely beyond the two agencies' legal obligations when rendering two separate biological opinions, is necessary to provide an objective determination of the net effect of all their actions on the listed species and on water users.**



An additional overall, systematic, coordinated analysis of the effect of all actions taken together and a process for implementing the optimized, combined set of actions is required to establish the credibility of the effort overall. The committee is aware that instances of coordination among the agencies certainly exist, including modification of actions to reduce or eliminate conflicting effects on the species. Indeed, the committee did not find any clear example of an action in one of the RPAs causing significant harm to the species covered in the other RPA. But coordination is not integration. The lack of a systematic, well-framed overall analysis is a serious scientific deficiency, and it likely is related to the ESA's practical limitations as to the scope of actions that can or must be considered in a single biological opinion. The interagency effort to clearly reach consensus on implications of the combined RPAs for their effects on all the species and on water quality and quantity within the delta and on water operations and deliveries should use scientific principles and methods in a collaborative and integrative manner. Similarly, this committee's efforts to evaluate potential harmful effects of each RPA on the species covered in the other RPA were hampered by the lack of a systematic, integrated analysis covering all the species together. Full documentation of decisions should be part of such an effort, as should inclusion of the environmental water needs of specific actions and for the entire RPA.

It is clear that integrative tools that, for example, combine the effect over life stages into a population-level response would greatly help the development and evaluation of the combined actions. There has been significant investment in hydrological and hydrodynamic models for the system, which have been invaluable for understanding and managing the system. An investment in ecological models that complement and are integrated with the hydrological and hydrodynamics models is sorely needed. Clear and well-documented consideration of water requirements also would seem well advised because some of the actions have significant water requirements. Credible documentation of the water needed to implement each action and the combined actions, would enable an even clearer and more logical formulation of how the suite of actions might be coordinated to simultaneously benefit the species and ensure water efficiency. **This recommendation for integration of models and across species responds to the committee's broad charge of advising on how to most effectively incorporate scientific and adaptive-management concepts into holistic programs for managing the delta, and likely goes beyond the agencies' bare legal obligations under the ESA, and will be addressed more thoroughly in the committee's second report.**

# 1

## Introduction

California's Bay-Delta estuary is a biologically diverse estuarine ecosystem that plays a central role in the distribution of California's water from the state's wetter northern regions to its southern, arid, and populous cities and agricultural areas (Figure 1-1). The Bay-Delta region receives water flows from the Sacramento and San Joaquin Rivers and their tributaries, which drain the east slopes of the Coast Range, the Trinity Alps and Trinity Mountains in northern California, and the west slopes of the Sierra Nevada Mountains. Outflows from the Bay-Delta, through San Francisco Bay and into the Pacific Ocean, are met by tidal inflows, resulting in a brackish water ecosystem in many reaches of the Bay-Delta. In addition to its ecological functioning and the ecosystem services it provides, there are numerous withdrawals of freshwater from the Bay-Delta, the largest being pumping stations that divert water into the federal Central Valley Project (CVP), primarily for Central Valley agriculture, and the State Water Project (SWP), primarily for southern California metropolitan areas. Other water is extracted from Bay-Delta waterways for consumptive use within the delta region itself, and for municipal and industrial use around the margins of the delta, and returned to its waterways diminished in quantity and quality. Most former wetland and marsh areas of the delta have been drained for agriculture, and are protected by an aging collection of levees (Moyle et al., 2010). Some of those areas also contain small urban settlements.

This hydrologic and engineered system has met the diverse water-related needs of Californians for decades. But construction and operation of the engineered system, along with the effects of an increasing population of humans and their activities, have substantially altered the ecosystem. Current conditions include altered water-quality and salinity regimes and the magnitude and direction of flows in the delta, with rigorous management of the location of the contour where salinity is  $2^2$  (known as X2) through flow releases from upstream reservoirs. Consequent changes in the abundance, distribution, and composition of species in the delta have been compounded by the introduction and invasion of many species not native to the region.

Recently, several species of native fishes have been listed as threatened or endangered under the federal Endangered Species Act (ESA) and the California Endangered Species Act. This study focuses only on the federal ESA. The federal listings have led to Section 7 (of the ESA) consultations between the operators of the CVP (the U.S. Bureau of Reclamation, or USBR) and of the SWP (the California Department of Water Resources, or DWR) and the Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (DFG). Those consultations led to the issuance of opinions by the Services that required changes ("reasonable and prudent alternatives," or RPAs) in water operations and related actions to avoid jeopardizing the continued existence and potential for recovery of delta smelt (*Hypomesus transpacificus*), winter-run and fall-run Chinook salmon (*Oncorhynchus*

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<sup>2</sup> This is often expressed as a concentration, e.g., "2 parts per thousand," but more recently it has been expressed as a ratio of electrical conductivities, hence it has no units.

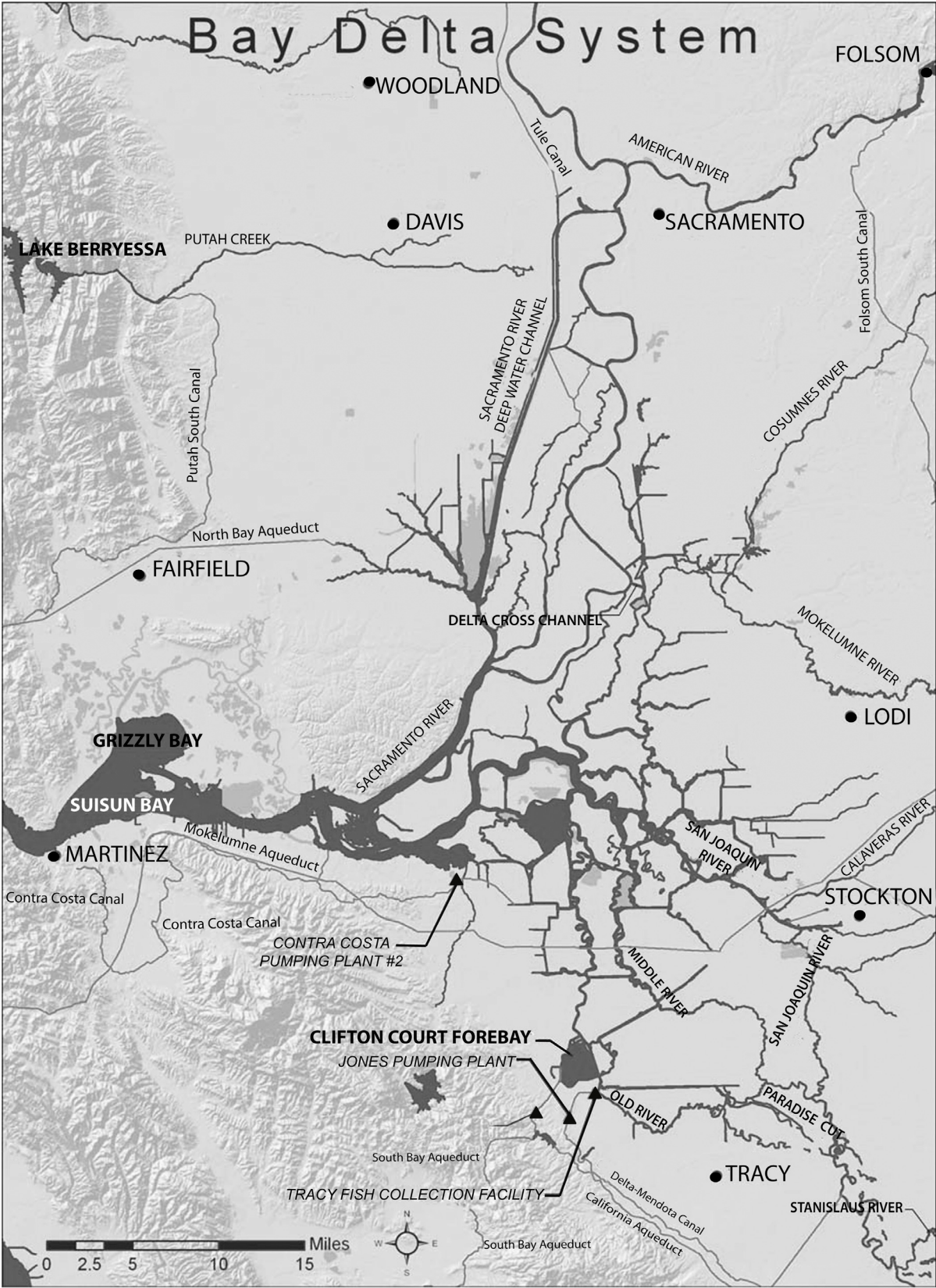


FIGURE 1-1 Map of the delta. Source: FWS, 2008.

*tshawytscha*), Central Valley steelhead (*Oncorhynchus mykiss*), and green sturgeon (*Acipenser medirostris*). The impacts of the RPAs on water users and the tensions that resulted have been exacerbated recently by series of dry years. In the longer term, climate change presents uncertainties and challenges with its anticipated impact on precipitation, snowpack, streamflow, and rising sea level, which will affect not only salinity and riparian habitats in the delta but likely also will threaten the integrity of the extensive system of levees (1,100 miles in length).

The RPAs are divided into many separate actions. The RPA in the FWS opinion (FWS, 2008), divided into 6 actions, focuses primarily on the flow and storage regimes as affected by diversions (pumping water to the south) and on reducing entrainment, with some focus on habitat. The NMFS RPA (NMFS, 2009) is divided into 5 actions with a total of 72 subsidiary actions. In addition to its focus on flow regimes, storage, and passage, it includes purchasing water to enhance in-stream flow, habitat restoration, a new study of acoustic-tagged steelhead, and development of hatchery genetics management plans. This committee did not evaluate all 78 actions and subsidiary actions in the two RPAs in detail. It spent most of its time on the elements of the RPAs that have the greatest potential to affect water diversions. It also spent time on elements whose scientific justifications appear to raise some questions.

Protecting all the listed species and preserving existing and projected uses of the region's water is a serious challenge. As the NMFS biological opinion (NMFS 2009) says, "the current status of the affected species is precarious," and "it has been difficult to formulate an RPA that is likely to avoid jeopardy to all listed species and meets all regulatory requirements." Adding to this difficulty is the existence of the many anthropogenic and other factors that adversely affect the fishes in the region but which are not under the direct control of the CVP or the SWP, and thus are not subjects of the biological opinions<sup>3</sup>. These include other human modifications to the system, including pollutants; invasive species and altered species composition; and engineered structures such as dams, canals, gates, pumps, and levees.

The complexity of the problem of the decline of the listed species and the difficulty of identifying solutions to it have led to disagreements, including concerns that some of the actions in the RPAs might cause harm and economic disruptions to many water users, and that some of the actions specified in the RPAs to help one or more of the listed species might harm others.

## SYSTEM OVERVIEW

### Overview of System Hydrology

We briefly describe the Sacramento-San Joaquin delta (Figure 1) and the two massive water storage and delivery projects that affect the area. Several publications go into great detail describing the delta and the operations of the federal and state water systems (DWR, 2006, 2009a, 2009b; USBR, 2006).

The Central Valley Project (CVP) operated by the U.S. Bureau of Reclamation and the State Water Project operated by the California Department of Water Resources provide water to farms and cities in an area encompassing the majority of the land and population of California. The two projects constitute the largest agriculture and municipal water-supply system in the United States. Water supplying both projects ultimately comes mainly from California's two major

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<sup>3</sup> Those other mainly adverse changes are considered as part of the "environmental baseline."

river systems—the Sacramento and the San Joaquin—with substantial imports from the Trinity River. Water also is stored in several major reservoirs as well, including Shasta (capacity 4.6 million acre-feet<sup>4</sup>, or MAF), Oroville (3.4 MAF), Trinity (2.4 MAF), New Melones (2.4 MAF), San Luis (2 MAF), Don Pedro (2 MAF), McClure (Exchequer) (1 MAF), and Folsom (1 MAF), as well as many smaller ones. Releases from those reservoirs are used to help manage flows and salinity in the delta, as well as being used for agriculture, municipal and industrial uses, recreation, flood protection, and hydropower.

The CVP provides about 5 MAF of water to agriculture each year (about 70 percent of the CVP's supply), 0.6 MAF for municipal and industrial (M&I) use (serving about 2 million people) and 1.4 MAF to sustain fish, wildlife, and their habitats. The SWP provides about 70 percent of its water to M&I customers (about 20 million people) and 30 percent to agriculture (about 660,000 acres of irrigated farmland). The largest SWP contractor is the Metropolitan Water District of Southern California, which receives about 50 percent of SWP deliveries in any one year. At least two-thirds of the population of California depends on water delivered from these projects as a primary or supplemental source of supply. Other important functions provided by both projects include flood protection, recreation, power generation, and water quality to preserve fish and wildlife.

Both projects preceded and accommodated the explosive growth of California's economy and population. The CVP was begun in the mid to late 1930s and the SWP was begun in the 1960s. Dozens of reservoirs and lakes, pumping facilities, and over 1,200 miles of pipelines and canals make up the two interdependent water-supply and delivery systems.

### The Sacramento-San Joaquin Delta

In the middle of both systems and connecting the northern water supply reservoirs and southern water demands is the Sacramento-San Joaquin Delta (Figure 1-1). Thus, the delta is an integral part of the water-delivery infrastructure for both the SWP and CVP. While the focus of this report is the determination of the effects of water allocations for fish, there are many other requirements that must be met in the delta to maintain flows and quality for the many uses of water delivered by the SWP and CVP projects.

Two major pumping plants draw water from the channels and rivers feeding the delta. The SWP pumping plant (Banks Pumping Plant) can deliver an average flow of nearly 6,700 cubic feet per second (cfs) to Clifton Court Forebay for transport to users south of the delta. The Jones Pumping Plant withdraws water primarily from Old River and has the capability of 4,600 cfs to contractors in southern California. Relatively small amounts of water are extracted for the Contra Costa canal (up to 195,000 af or 195 thousand acre-feet {TAF} per year) and the North Bay Aqueduct (up to 71 TAF per year) (FWS, 2008). In addition, diversions occur upstream of the delta. These diversions affect the location of X2, the amount of water that can be withdrawn at the pumps, the flow in the San Joaquin River, and other factors.

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<sup>4</sup> An acre-foot is the amount of water required to cover an acre of land to a depth of one foot; it is equal to 43,560 cubic feet, 325,851 gallons, or 1,234 cubic meters of water.

## THE PRESENT STUDY

The statement of task (Appendix A) charges the NRC committee to review the scientific basis of the Services' RPAs and advise on how to most effectively incorporate science and adaptive management concepts into holistic programs for management and restoration of the delta. To balance the need to inform near-term decisions with the need for an integrated view of water and environmental management challenges over the longer-term, the committee was tasked to produce two reports. This first report focuses on the scientific bases of the water-management alternatives (RPAs) in the two biological opinions and whether there might be possible alternative RPAs that would be as or more protective of the fishes with lesser impacts on other water uses. The committee also has considered "other stressors," as specified in its statement of task. These are stressors not necessarily directly associated with the water projects; they are part of the "environmental baseline," a concept related to the Endangered Species Act that refers to other anthropogenic modifications of the environment. As such, they are not addressed by the RPAs, because RPAs must address operations of the water projects.

In this first report, most of the committee's focus has been on the question of the scientific bases of the water-management alternatives (RPAs) in the biological opinions, with a smaller focus on potential conflicts between the RPAs, potential alternative RPAs, and other stressors. The committee's second report will focus on broader issues surrounding attempts to provide more sustainable water supplies and to improve the ecological sustainability of the delta, including consideration of what ecological goals might be attainable.

To prepare this report, the committee met in Davis, California for five days in January 2010. It heard presentations from representatives of federal and state agencies and a variety of other experts, and from members of the public, and began work on the report. The committee was able to consider information received by February 8. Additional writing and two teleconferences occurred in February, and the report was reviewed according to the NRC's report-review procedure (the reviewers are acknowledged in the preface).

## 2

# The Legal Context of This Report

### SCOPE OF THE COMMITTEE'S TASK

The committee was asked “to review the scientific basis of actions that have been and could be taken to simultaneously achieve both an environmentally sustainable Bay-Delta and a reliable water supply.” While this committee’s review is scientific, and not legal, the committee nonetheless recognizes the importance of the legal context within which its evaluation takes place. The standard of review applicable in legal challenges to the opinions and associated RPAs provides a useful reference. In such lawsuits, courts will invalidate the RPAs only if they are demonstrated to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” (Administrative Procedure Act, 5 U.S.C. § 706(2)(A)). Courts are reluctant to second-guess technical agency judgments and may not substitute their judgment for that of the agency, particularly in cases where there are scientific uncertainty and differing scientific views. *See* Aluminum Co. of America v. Bonneville Power Administration, 175 F.3d 1156 (9th Cir. 1999); Trout Unlimited v. Lohn, 559 F.3d 946 (9th Cir. 2009). Thus, while the committee can come to different conclusions than the agencies did in their biological opinions, that would not be a *legal* justification for deeming them inadequate, as long as the agencies adequately considered the available scientific data and their conclusions are supportable by the evidence. Similarly, the RPAs should not be considered *legally* inadequate simply because different alternatives could be scientifically justified, as long as the agencies could reasonably believe that their RPAs would avoid the likelihood of jeopardy.

Some aspects of the committee’s task require it to make determinations beyond the scope of the agencies’ legal obligations or authority when issuing a biological opinion and RPAs. For example, the committee’s charge includes consideration of the effects of stressors such as pesticides, ammonium, and invasive species on federally listed and other at-risk species in the Bay-Delta—stressors likely beyond the action agencies’ legal authority to regulate, unless the effects are indirectly changed by the RPAs. Any such considerations by this committee in this or in its second report would have no bearing on the question of whether or not the biological opinions and RPAs are legally adequate. Instead, such considerations should be interpreted in contexts apart from the biological opinion and RPAs, such as the Bay-Delta Conservation Program (development of a habitat conservation plan); the State Water Resources Control Board’s development of flow criteria for the delta; the Delta Stewardship Council’s development of a delta plan; and others.

### POTENTIAL VIOLATIONS OF ESA SECTION 7 AND SECTION 9

In each biological opinion, the relevant wildlife agency concluded that the proposed federal action—implementation of the water projects’ operations plan—was likely to “jeopardize” the

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continued existence of species listed as endangered and to adversely modify their critical habitat. This would violate Section 7 of the Endangered Species Act (ESA), which requires agencies to “insure” that any actions they authorize, fund, or carry out are not likely to jeopardize endangered species or to destroy or adversely modify the species’ critical habitat (16 U.S.C. § 1536 (a) (2)). As defined by agency regulations, “jeopardy” means that the proposed action “reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of [relevant endangered species] in the wild by reducing the reproduction, numbers, or distribution of that species” (50 C.F.R. § 402.02). As required by the ESA, the wildlife agencies suggested “reasonable and prudent alternatives” (RPAs) that would allow the action to go forward without violating Section 7 (16 U.S.C. § 1536 (B) (3) (A)).

In addition to the jeopardy determinations (generally, applying to species as a whole), both biological opinions found that the proposed action would “take” individual members of the endangered populations in violation of Section 9 of the ESA. By regulation, the “take” of an endangered species includes “an act which actually kills or injures wildlife” and may include “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (*Babbitt v. Sweet Home Chapter of Communities*, 515 U.S. 687 (1995)).

The resource agencies, the National Marine Fisheries Service and the Fish and Wildlife Service, issued an “incidental take statement,” in the present case, setting forth reasonable and prudent measures necessary and appropriate to minimize the effect of the proposed action on endangered species. If the action agencies (the Bureau of Reclamation and the California Department of Water Resources) comply with those measures, including monitoring and reporting requirements, then any “takes” that result from project operations will be deemed “incidental,” and they will be exempt from the prohibitions of Section 9.

## STANDARDS FOR THE PREPARATION OF BIOLOGICAL OPINIONS

### Best Available Data

Under the ESA, the agencies must develop their biological opinions and associated RPAs using the “best scientific and commercial data available” (16 U.S.C. § 1536 (a) (2)). Courts have emphasized the qualifier *available*, explaining that perfect data are not required. Action can be taken based on imperfect data, so long as the data are the best available. In addition, the above requirement does not remove the agency’s discretion to rely on the reasonable judgments of its own qualified experts, even if others, even a court, might find alternative views more persuasive (see *Aluminum Co. v. Bonneville Power Admin.*, 175 F.3d 1156 (9<sup>th</sup> Cir. 1999)).

Thus, the courts afford the agencies significant deference in determining the best data available for developing the RPAs. Therefore, even if this committee might have relied on different data or come to different conclusions than the agencies did, it does not follow that the RPAs are legally insufficient. Rather, this committee’s conclusions and recommendations should be seen as applying to future work beyond the scope of the agencies’ legal obligations.



## Economic Considerations

Although the economic impact of species protections may be relevant under the ESA, its influence is limited. For example, economic concerns *may not* be part of the decision whether or not to list species as endangered or threatened, but *must be* considered when the agencies designate critical habitat (16 U.S.C. § 1533). When developing biological opinions and RPAs, the Ninth Circuit acknowledged that the wildlife agencies may go beyond “apolitical considerations” and that if two proposed RPAs would avoid jeopardy to the relevant species, the agencies “must be permitted to choose the one that best suits all of its interests, including political or business interests.” *Southwest Center for Biological Diversity v. U.S. Bureau of Reclamation*, 143 F.3d 515 (9th Cir. 1998); *See also* *Bennett v. Spear*, 520 U.S. 154 (1997) (asserting that the “best scientific and commercial data” provision is . . . intended, at least in part, to prevent uneconomic [because erroneous] jeopardy determinations”). Nevertheless, the lower courts have been reluctant to second-guess agency opinions on the basis of economic arguments (*Aluminum Co.* cited above).

## Effects of the Proposed Action and the Environmental Baseline

In preparing biological opinions, agencies must evaluate the “effects of the [proposed] action” on the species or its critical habitat. Other adverse modifications of the species’ habitats or negative effects on their populations are considered part of the “environmental baseline.” The agencies’ analysis includes consideration of:

- 1) direct effects;
- 2) indirect effects (“those that are caused by the proposed action and are later in time, but still are reasonably certain to occur”);
- 3) interrelated actions (“those that are part of a larger action and depend on the larger action for their justification”);
- 4) interdependent actions (“those that have no independent utility apart from the action under consideration”); and
- 5) cumulative effects (“those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation”) (50 C.F.R. §§ 402.02 and 402.14(g)(3-4)).

## STANDARDS FOR THE PREPARATION OF REASONABLE AND PRUDENT ALTERNATIVES (RPAs)

Although RPAs are not binding on the action agency, adherence to the RPAs provides the agency with a safe harbor from claimed violations of the ESA. As the U.S. Supreme Court explained, “the action agency is technically free to disregard the Biological Opinion and proceed with its proposed action, but it does so at its own peril (and that of its employees), for ‘any person’ who knowingly ‘takes’ an endangered or threatened species is subject to substantial civil and criminal penalties, including imprisonment” (*Bennett v. Spear*, 520 U.S. 154 (1997)).

Under agency regulations, the RPAs must satisfy each of the following four requirements:

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- 1) Project purpose: RPAs must be capable of implementation in a manner consistent with the intended purpose of the action.
- 2) Scope of agency authority: RPAs must be consistent with the scope of the action agencies' legal authority and jurisdiction.
- 3) Feasibility: RPAs must be economically and technologically feasible; and
- 4) Avoid jeopardy: The directors of FWS and NMFS must believe that the RPAs would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat (50 C.F.R. § 402.02).

Although RPAs must avoid the likelihood of jeopardy, they are not required to promote recovery of the affected species. In other words, no RPA has the responsibility of mitigating all the adverse effects—the “environmental baseline”—that may be causing the decline of a listed species. They must only avoid the likelihood that the *proposed action* will cause jeopardy.

## 3

# The Life Histories of The Fishes

## INTRODUCTION

Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*O. mykiss*), and green sturgeon (*Acipenser medirostris*) are anadromous species; that is, they spawn in freshwater but spend a portion of their life in saltwater. Delta smelt (*Hypomesus transpacificus*) are resident within the brackish and freshwater habitats of the delta. In both anadromous and resident life-history strategies the fish migrate from their natal habitat into their adult habitat and then back to the spawning habitat, completing the life cycle. The fish do not simply drift between their habitats, but have evolved specific life-stage behaviors to meet the challenges they confront. These behaviors are cued by the fishes' physiology and by environmental conditions, which together drive the timing and movement of the individuals through their life cycle. Because all species spend time in the delta, they share some environmental conditions and challenges, but their different life histories cause them also to face unique challenges. Many of the challenges are the result of anthropogenic modifications to the delta and river habitats, and these challenges are of particular concern (see Chapter 5). Some, but not all, of them are addressed in the RPAs. The information on the fishes' life histories presented below illustrates the complexity of their interactions with their environments and the potential importance of apparently small changes in the timing, direction, and magnitude of variations in flow, salinity, turbidity, water temperature, and other environmental conditions.

## FISHES OF THE SALMON FAMILY

The delta provides habitat for two species of Pacific salmon, Chinook salmon (hereafter "salmon") and the rainbow trout-steelhead complex. Pacific salmon typically are anadromous. There are many exceptions, however, such as rainbow trout, which although apparently genetically identical to steelhead, are not anadromous; and there is a great deal of variation in their life histories (Williams, 2006).

When adult salmon, steelhead, and sturgeon return from the ocean and begin their upriver migration, they experience several challenges, including physical and water-quality blockages. Here the delta water system has had a great impact on populations, for 80% of the historical spawning habitat for Chinook salmon (Clark, 1929) and much of it for the other species has been blocked by the storage reservoirs of the Central Valley (Lindley et al., 2006). Summer temperatures in the Central Valley waterways can reach potentially lethal levels for salmon, increasing their susceptibility to disease and decreasing metabolic efficiency (Myrick and Cech, 2001, 2004). The timing of adult salmon runs leads them to avoid most of the detrimental effects of high summer temperatures because they enter the delta and swim upriver to their spawning habitats and hatcheries in the spring, autumn, and winter. Wild spawning fish excavate redds in

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stream reaches with loose gravel in shallow riffles or along the margins of deeper runs (NMFS 2009), where temperatures are cooler and eggs buried in the gravel receive a sufficient flux of oxygenated water through interstitial flow. The eggs incubate for several months and after emerging the young fry either immediately begin their migration back to the ocean or spend several weeks to a year in freshwater before migrating. Because of this diversity, juvenile salmon and steelhead pass through the delta throughout the year; however, the timing and size of the migrants generally corresponds to specific runs (Williams, 2006, Lindley et al., 2006).

Salmon and steelhead undergo a complex set of physiological changes in preparation for their migration to the ocean known as "smoltification," after which the young fish are known as "smolts." The alteration of the fish's physiology to successfully osmoregulate in saltwater after beginning life in freshwater is a significant challenge that can be exacerbated by human-caused environmental changes (e.g., NRC, 2004b). Most Central Valley Chinook salmon migrate to the ocean within a few months of hatching and the smolts are less than 10 cm long, although some remain in freshwater for up to a year. Juvenile steelhead migrate to sea after one to three years in freshwater, and can be as large as 25 cm in length. Young migrating Chinook are much more vulnerable to entrainment in adverse flows than the stronger-swimming steelhead smolts.

Juvenile salmon migrants experience predation during their downstream migration through the Sacramento River or through the interior delta on their way to the sea. Fish that enter the central delta, driven by the strong tidal and pumping-induced flows, are moved through a labyrinth of channels, which further delays their migration and exposes them to additional predators (Perry et al., 2010). Finally, fish that enter the Old and Middle Rivers (OMR) can be drawn towards the SWP and CVP pumps (Kimmerer, 2008a). Juvenile salmon that successfully pass through the delta enter the ocean and spend one or more years there before returning to freshwater to spawn. Ocean survival is particularly dependent on the conditions the fish experience during the first few months they enter the saltwater (Lindley et al., 2009). Fish that are drawn into the central and southern delta by reverse flows are more vulnerable to predation than those that take a more direct path to the ocean, and other aspects of changed environmental conditions also expose them to predators (for more detail, see Chapter 5).

## GREEN STURGEON

The Central Valley green sturgeon (*Acipenser medirostris*) is an anadromous fish that can reach 270 cm (nearly nine feet) in length with a maximum age of 60 to 70 years (Moyle et al. 2002). The historical distribution of green sturgeon is poorly documented, but they may have been distributed above the locations of present-day dams on the Sacramento and Feather Rivers (Beamesderfer et al., 2007). Information on the distribution of green sturgeon in the San Joaquin River is lacking. Mature green sturgeon enter the Sacramento River from the ocean in March and April. The Red Bluff Diversion Dam can impede their migrations (Heublein et al. 2009). After spawning, green sturgeon may immediately leave the river or hold over in deep pools until the onset of winter rains (Erikson et al., 2002, Heublein et al., 2009). Individuals then migrate back to the ocean and return to freshwater to spawn every two to four years (Erickson and Webb, 2007, Lindley et al., 2008).

Based on adult spawning behavior and the habitats required for green sturgeon embryo development, reproductive females likely select spawning areas with turbulent, high velocities near low-velocity resting areas. Green sturgeon spawning areas are presumed to be characterized by

coarser substrates upstream of lower gradient reaches, which usually have slower velocities. Eggs and milt are released in turbulent water above deep, complex habitats; fertilized eggs drift into deeper areas and stick onto the substrate. Eggs require cool temperatures for development and hatch after approximately a week. Larval and juvenile green sturgeons are bottom-oriented and nocturnally active until a few months of age (Kynard et al., 2005). Juvenile green sturgeon migrate into seawater portions of natal estuaries as early as one and a half years old (Allen and Cech, 2007), and eventually emigrate to nearshore coastal waters by three years old. Subadults are migratory, spending their next 12 to 16 years foraging in the coastal ocean and entering western estuaries during the summer (Moser and Lindley, 2007). In the ocean, green sturgeon inhabit the coastal shelf out to 100m depth with occasional, rapid vertical ascents near or to the surface (Erickson and Hightower, 2007).

## DELTA SMELT

The delta smelt is a near-annual species; most individuals complete their life cycle in one year, but some survive for two years and reproduce again. Delta smelt reside in brackish waters around the western delta and Suisun Bay region of the estuary, being commonly found in salinities of 2 to 7, but the range they occupy extends from 0 (freshwater) to 15 or more (Moyle, 2002). In the winter (December to April), pre-spawning delta smelt migrate to tidal freshwater habitats for spawning, and larvae rear in these areas before emigrating down to the brackish water (Bennett, 2005). Delta smelt inhabit open waters away from the bottom and shore-associated structural features. Although delta smelt spawning has never been observed in the wild, information about related members of the smelt family suggests that delta smelt use bottom substrate and nearshore features during spawning. Juvenile and adult stages, 20-70 mm in length, are generally caught in the western delta and Suisun Bay in the landward margin of the brackish salinity zone, which may extend upstream of the confluence zone of the Sacramento and San Joaquin Rivers. Historically pre- and post-spawned fish were observed throughout the delta. In wet years, spawning adults often were observed in the channels and sloughs in Suisun Marsh and the lower Napa River.

In the brackish habitat of the western delta the flow is tidal with a net seaward movement, and so to maintain position, the juvenile fish appear to coordinate swimming behavior with the tides, occurring near the surface on the flood tides and at depth on the ebbs. However, in other regions, adaptive tidal behavior has not been observed and fish simply move with the tides, which may promote horizontal exchange to adjacent shallow water habitats. The FWS biological opinion emphasizes the complexity of this behavior (p. 651) and thus the above description is a general one that does not capture details that might be important.

The brackish zone also has higher densities of other fishes and zooplankton, suggesting that it may serve as a nursery habitat for delta smelt and other fishes (Bennett 2005). The spawning movement of adults from their brackish habitat in the western delta landward to the freshwater portions of the delta is triggered by high flows and turbidity pulses.

This diversity of paths from the low-salinity (brackish) zone to the freshwater spawning habitats suggests that delta smelt do not have fidelity to specific structural habitats as do salmon. Instead, their upstream movement is directed by a combination of physiological and environmental cues that involve salinity, turbidity, and both net and tidal flows through the channels of the delta and its tributaries. Additionally, since 2005, approximately 42% of the current delta smelt popu-

lation is in the Cache Slough complex north of the delta, and may represent an alternative life-history strategy in which the fish remain upstream through maturity (Sommer et al., 2009).

Historically, the complete delta-smelt life cycle occurred unobstructed throughout the delta. Human-caused changes in delta water quality and hydrodynamics have disrupted the cycle and since 2005, delta-smelt population densities have been extremely low in the traditional habitats in the central and south delta ([www.dfg.ca.gov/delta/data/](http://www.dfg.ca.gov/delta/data/)), and pump salvage<sup>5</sup> also has been extremely low, about 4% of the 50-year average index ([www.dfg.ca.gov/delta/data/townet/indices.asp?species=3](http://www.dfg.ca.gov/delta/data/townet/indices.asp?species=3)). Analyses seeking causes for the declines to the present condition have focused on relationships between abundance, salvage, water exports, delta flows, turbidity, and food. Kimmerer (2008b) found that delta-smelt survival between summer (juvenile) and fall (adult) was related to zooplankton biomass, suggesting that high zooplankton abundances contributed to delta-smelt abundance and residence time in the southern delta, and thus increased entrainment risk at the pumps. Grimaldo et al. (2009) found that between 1995 and 2005 the inter-annual variation in adult delta-smelt salvage was best correlated with turbidity and the interaction of OMR<sup>6</sup> flows and X2<sup>7</sup>. The annual salvage of age-0 delta smelt (fish hatched in that year, around 27 mm in length) was best correlated with spring abundance of zooplankton, OMR flows, and turbidity. Additionally, Grimaldo et al. suggested that differences in temporal patterns of entrainment of delta smelt between years may be a measure of the degree to which their physical habitat overlapped with the hydrodynamic footprint of negative OMR flows towards the pumps. However, the year-class strength of adult delta smelt was not related to salvage, although the position of X2 was correlated with salvage at an intra-annual scale when OMR flows were negative. Other analyses showed a similar correlation (e.g., FWS, 2008).

While the correlation between OMR flows and salvage is substantial (Kimmerer, 2008b), their effect on population dynamics is not clear (Bennett, 2005; Grimaldo et al., 2009). Indirect factors could have contributed to population declines through a reduction in the size and abundance of food in the brackish zone. Overall zooplankton abundance is correlated with delta smelt survival (Feyrer et al., 2007; Kimmerer, 2008b; Grimaldo et al., 2009). Zooplankton abundance has been reduced through several factors, including the introduction of the overbite clam (*Corbula amurensis*), an efficient grazer of zooplankton in the low-salinity zone, and changes in nutrients that have altered the phytoplankton population so that cyanobacteria, which can reduce the food supply for zooplankton, have increased while diatoms have declined (FWS, 2008). The change in zooplankton species, associated with the success of invasive species in changed environmental conditions, also is probably important. It has been suggested that the position of X2 affects the size of delta smelt habitat and thus it affects the susceptibility of juvenile and adult delta smelt to pump entrainment (Feyrer et al., 2007; Kimmerer, 2008a). Furthermore, the mean position of X2 has moved inland about 10 km over the past 15 years (FWS 2008, p. 180). However, there is no direct evidence relating these indirect effects to population numbers of smelt

<sup>5</sup> "Salvage" refers to fish caught in the pumps and retrieved alive to be released elsewhere in the system. It often is used as a surrogate estimate for "take" by the pumps.

<sup>6</sup> The term "OMR flows" refers to flows in the Old and Middle Rivers (see Figure 1-1), which are affected by the pumping of water for export. At high negative flows, that is, flows away from the sea towards the pumps in the south, the normal seaward flow associated with ebb tides can be completely eliminated.

<sup>7</sup> "X2" refers to the salinity isohaline of salinity 2 (a contour line of equal salinity). Sometimes X2 is used as shorthand for the mean position of that isohaline, measured in kilometers upstream from the Golden Gate Bridge over the outlet of San Francisco Bay. Managing the position of X2 is a major aspect of the delta smelt Biological Opinion and RPA; it is managed by adjusting flows of fresh water from delta reservoirs, as well as by adjusting pumping rates.

(Kimmerer, 2002; Bennett, 2005). In addition, delta smelt are now largely absent from the central and southern delta, while a significant portion of the remaining population exists in the Cache Slough complex to the north. These changes increase the uncertainty surrounding current estimates of delta smelt population changes in response to alterations in delta hydraulics.

## 4

### Use of Models

#### MODELING SCENARIOS

Modeling of baselines and future project actions is a standard practice of evaluating impacts. Both biological opinions relied on the use of modeling scenarios (known as Studies) provided by the Operations Criteria and Plan (OCAP) biological assessment (BA) ([http://www.usbr.gov/mp/cvo/ocap\\_page.html](http://www.usbr.gov/mp/cvo/ocap_page.html)), although the extent to which such results were used in each biological opinion and in the formulation of RPAs varied significantly. The “proposed action” with reference to ESA is the continued operation of the CVP and SWP with additional operational and structural changes (Table 2-1 of USBR, 2008) to the system. The U.S. Bureau of Reclamation (USBR) and the California Department of Water Resources (DWR) provided the results of the modeling conducted for simulating baseline conditions, future system components, operational strategies, and the water supply demands. In addition to simulating the water-supply deliveries of the project, the modeling also attempted to mimic the project operations associated with the regulatory environments described in operating criteria described in D-1485, D-1641, CVPIA Section 3406 (b)(2) and the Environmental Water Account (EWA) (USBR 2008). A major difference in the current and future scenarios is the extent to which EWA is used. The purpose of EWA was to enable diversion of water by the SWP and CVP from the delta to be reduced at times to benefit fish species while minimizing uncompensated loss of water to SWP and CVP contractors (USBR, 2008, Chapter 2). The EWA is intended to replace the water loss due to pumping curtailments by purchasing surface water and groundwater from willing sellers and through increasing the flexibility of operations. The simulations include both a “full EWA” characterizing the full use of EWA assets as well as a “limited EWA” focusing only on a limited number of assets. The EWA is currently under review to determine its future (FWS 2008 p. 34) and the RPA actions were not based on it.

Another factor that changed from current to future conditions is the way water demand by CVP/SWP users is simulated. Demands have been pre-processed using either contractual amounts and/or level of development (existing versus future). Some demands were assumed to be fixed at contractual amounts whereas in other cases they varied according to the hydrologic conditions. This topic will be considered in the committee’s second report.

While several study scenarios were developed for the OCAP biological assessment (USBR, 2008), the use of modeling results in the biological opinions was largely limited to a smaller set of scenarios (Table 4-1).

Study 7.0 describes the existing condition (circa 2005), whereas Study 7.1 presents the existing condition demands with near future facilities as well as the projected modification to EWA. Study 8 describes the future condition corresponding to the year 2030 (USBR, 2008, pp. 9-33, 9-53, 9-54). Study series 9 constitutes a future condition representing modified hydrology (warm and warmer, dry and wet) along with a projected sea level rise of one foot.



TABLE 4-1 Key scenarios used for biological opinions of FWS and NMFS

Study	Level of Development (Year)	Environmental Water Account (EWA)	Future project facilities <sup>1</sup>	Climate and Sea Level Rise
7.0	2005	Full EWA	No	No
7.1	2005	Limited EWA	Yes	No
8.0	2030	Limited EWA	Yes	No
9.0-9.5	2030	Same as in Study 8.0 <sup>2</sup>	Yes	Yes

<sup>1</sup>Future project features include South Delta Improvement Program (Stage 1), Freeport Regional Water Project, California Aqueduct and Delta-Mendota Canal intertie

<sup>2</sup>According to the OCAP BA (USBR, 2008), Study suite 9 is identical to Study 8.0 except for climate change and sea-level rise

### CENTRAL ISSUES CONCERNING MODEL USE IN THE BIOLOGICAL OPINIONS

The USFWS and NMFS supplemented the modeling results provided by USBR and DWR with their own modeling efforts and available science on the implications of management actions on species. The primary suite of models provided to FWS and NMFS include (Chapter 9, OCAP-BA):

- (a) Operations and hydrodynamic models: CalSim-II, CalLite, the Delta Simulation Model II {DSM2}, including particle-tracking models (PTMs, which also are considered as surrogates for biological models)
- (b) Temperature models: Reclamation Temperature, SRWQM, and Feather River Mode
- (c) Biological models: Reclamation Mortality, and SALMOD

The modeling framework used by the agencies is diagrammed in Figure 4-1.

The USFWS, in its biological opinion, used available results from a combination of tools and data sources, including CalSim-II, DSM2-PTM, DAYFLOW historical flows, and statistical models based on observational data and particle-tracking simulations (FWS 2008 pg-204). NMFS analyses included results from coupled CalSim-II simulations with various water-quality and biological models for a few of the life stages (NMFS, 2009, page 64).

The CalSim-II model, the primary tool used to evaluate the water-resources implication of the proposed actions, was developed by the DWR and the USBR to simulate water storage and supply, streamflows, and delta export capability for the Central Valley Project (CVP) and the State Water Project (SWP). CalSim-II simulates water deliveries and the regulatory environment associated with the water-resources system north of the delta and south of the delta using a single time step (one month) optimization procedure based on a linear programming algorithm. CalSim-II represents the best available planning model for the CVP-SWP system, according to a CALFED Science Program peer review by Close et al. (2003) (USDI-USBR, 2008, p. 9-4). However, many users have suggested that its primary limitation is its monthly time step, and the model should be used primarily for comparative analysis between scenarios and discouraged its use for absolute predictions (Ferreira et al., 2005; USBR, 2008, Chapter 9). In response to the

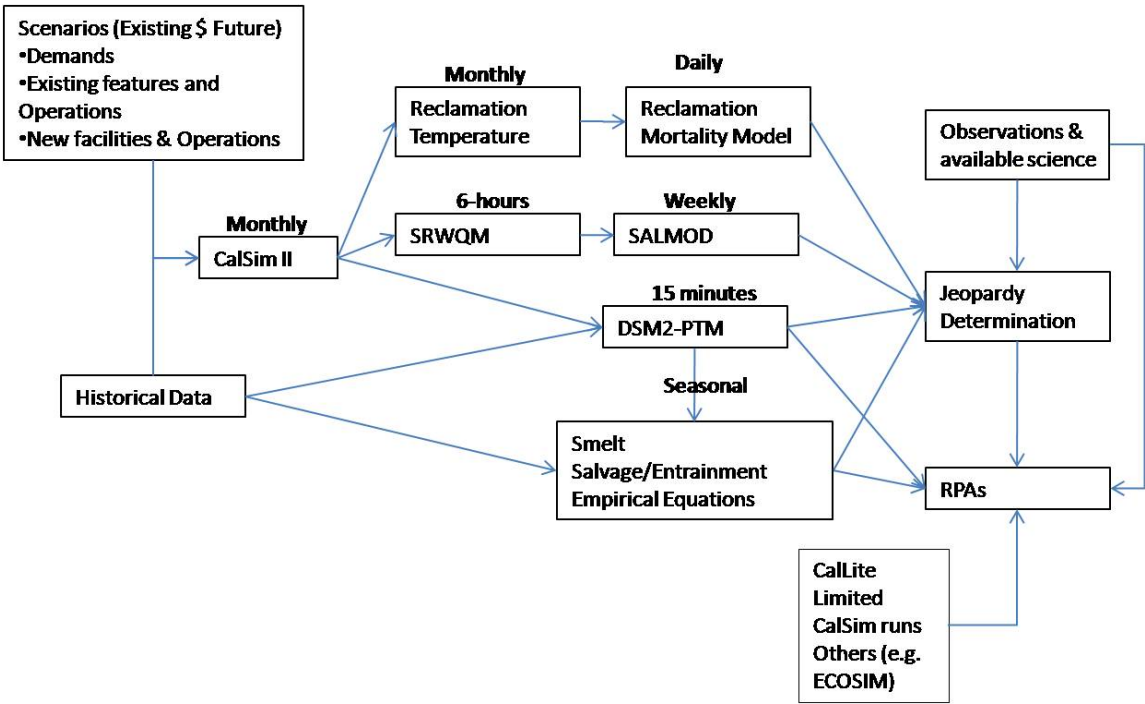


FIGURE 4-1 Modeling framework used in NMFS and USFWS biological opinions and RPAs.

peer review by Close et al. (2003), DWR and USBR provided a list of development priorities (Table 2, DWR/USBR, 2004), including the use of a daily time step, but it is not clear how many of such planned improvements have been incorporated into the version of CalSim-II used in the biological opinions.

Several other tools and models were central in effects analysis and developing RPAs, including hydrodynamic and water-quality (DSM2, USBR's temperature, SRWQM), habitat (SALMOD), and statistical and particle-tracking models (salvage, DSM2-PTM). Some of these models have already been evaluated in the literature for their individual strengths and limitations, though some (SALMOD and USBR's mortality models) have not yet been formally peer reviewed. We first review some of the challenges of applying these individual models in the determination of RPAs, and then focus on examining the modeling process, including how the models contributed to the development of RPAs, and where the uncertainties and vulnerabilities in that process lie.

### Model Scale and Management Implications

Very generally, the tiered modeling approach (Figure 4-1) applied the results of CalSim-II as input to various hydrodynamic and ecological models to predict impacts of project operations and, to a very limited extent, to explore RPAs. At one level, model simulations were also used or performed to investigate the feasibility of some proposed actions. For example, CalSim-II was used at the planning level to investigate whether the USBR could meet the 1.9MAF (at the end of

September) required by actions I.2.3 and I.2.4 (maintaining cold water supplies necessary for egg incubation for the following summer's cohort of winter-run), and to recommend storage conservation in severe and extended droughts (NMFS, 2009, page 596). Similarly, examination of CalSim results and hydrologic records demonstrated to the agencies that the first year of a drought sequence is particularly critical to storage and operations in the following drought year (NMFS 2009 page 596). The benefits of using models at this planning level, especially given the importance of water-year types, is clear, and there is little controversy about this application of the models.

At another level, model scenarios were examined to investigate the relationships between operations and impacts on various life stages of the fish across the water-year types and operations scenarios. For example, NMFS used DWR's Delta Survival Model (Greene, 2008) to estimate mortality of smolts associated with three CalSim-II Study scenarios (7.0, 7.1, 8.0). The USFWS used statistical models of salvage and total entrainment (Kimmerer, 2008; Grimaldo et al., 2009) to investigate the effects of proposed operations by comparing actual and predicted salvage and entrainment losses under modeled OMR flows (FWS, 2008, page 211).

While some challenges exist in linking models in this tiered approach (see next section), concerns and controversies appear to be largely directed at the various forms of statistical relationships of salvage versus OMR flows, extrapolation of these relationships that describe impacts on single life stages to assess the population impacts on species, and the use of biological models without full consideration of their underlying uncertainties. In particular, this nested sequence of statistical models does not allow for uncertainties at one step to influence predictions at the next step. As a result, some of the RPA actions, especially those involving X2 and OMR flow triggers, are based on less reliable scientific and modeling foundations than others. In these cases, the incomplete data and resolution of the models do not closely match the resolution of the actions.

### Adequacy of Current Models

#### *Life-cycle models*

Both agencies have been criticized for the lack of adequate life-cycle models to address population level responses (e.g., Deriso, 2009; Hilborn, 2009; Manly, 2009). Nonlinear and compensatory relationships between different life-history stages are common in many fish species. Moreover, many life-history traits exhibit significant patterns of autocorrelation, such that changes in one life-history trait induce or cause related changes in others. These patterns can most effectively be understood through integrated analyses conducted in a modeling framework that represents the complete life cycle. However, complete life-cycle models were not used in either biological opinion to evaluate the effects of changes in operations. The agencies acknowledge that further model development is required, including the "cooperative development of a salmonid life-cycle model acceptable to NMFS, Reclamation [USBR], CDFG, and DWR" (NMSF biological opinion, page 584). While one life-cycle model (Interactive Object-Oriented Salmon simulation) was available for winter-run salmon from the OCAP BA (USBR, 2008), this model was rejected based on model resolution and data limitation issues (NMFS, 2009, page 65). Similarly, a better life-cycle model for delta smelt is critically needed (PBS&J 2008). Such life-cycle models for delta smelt are currently under development. The committee recommends that

development of such models be given a high priority within the agencies. The committee also encourages the agencies to develop several different modeling approaches to enable the results of models with different structure and assumptions to be compared. When multiple models agree, the confidence in their predictions is increased.

### *Particle-Tracking Models (PTMs)*

Particle-tracking models (PTMs) are models that treat eggs and larval fishes as if they were particles and simulate their movements based on hydraulic models of flows. Criticisms have applied to the use of PTMs, which rely on some key assumptions (e.g., neutral buoyancy, no active swimming) that have been challenged at least for some life stages (Kimmerer and Nobriga, 2008) on the basis that fish live and move in three dimensions. Other limitations of the use of PTMs in this case include the reliance on the one-dimensional DSM2, use of random-walks to simulate lateral movements, and the lack of simulation of fish behavior. In view of these limitations, PTMs as used in this case may not be suitable for predicting the movement of fish of some life stages (juvenile and adults) where behavior becomes relevant to the question of potential entrainment (Kimmerer and Nobriga, 2008). The NMFS acknowledges these limitations, noting that "The acoustic tagging studies also indicate that fish behavior is complex, with fish exhibiting behavior that is not captured by the 'tidal surfing' model utilized as one of the options in the PTM simulations. Fish made their way downstream in a way that was more complicated than simply riding the tide, and no discernable phase of the tide had greater net downstream movement than another" (NMFS, 2009, page 651).

However, while fish seldom behave like passive particles, results based on passive particles can provide insights. For example, the NMFS used a combination of models to simulate mortality rates of salmonids for three CalSim-II scenarios. The results were used to compare the inter- and intra-annual impacts of the three scenarios (NMFS, 2009, page 381). Further, the agencies advocate improving the model through further study, such as Action iV.2.2, which includes an acoustic tag experiment in part to evaluate action benefits and in part to improve PTM results (USBR, 2008, page 645). Thus, while there is uncertainty regarding the accuracy of the mortality losses, the use of the models in a comparative way is probably acceptable. However, it should be made clear how the model is used, and the explicit consideration of the PTM assumptions and uncertainties should be more clearly documented in the biological opinions.

Although there has not been an assessment of the degree to which these limitations affect the conclusions, PTM results were used for RPA development. Although the DSM2 has been calibrated adequately for OMR flows, there is no clear evidence concerning the accuracy of the PTM's ability to simulate smelt entrainment in relation to how the models are used for jeopardy determination and RPA development. This is particularly important because a number of actions driven by the RPAs recommend trigger values for OMR to curtail exports. As discussed in a later section, the science surrounding these OMR triggers is less clear than for many other aspects of the RPAs, and this trigger may result in significant water requirements. The committee's recommendations for improving the modeling and associated science are intended to improve the best science available to the agencies. The committee will address such improvements in greater detail in its second report.

### *Other Biological Models*

The NMFS used other biological models to simulate the effects of operations on various life stages of salmon. These models involve several key assumptions and data limitations that influence the reliability of their results.

For example, SALMOD, developed by the USGS, was used by the NMFS to investigate the population level responses of the freshwater life stages to habitat changes caused by project operations (NMFS, 2009, page 269). A variety of weekly averaged inputs are required, including streamflow, water temperature, and number and distribution of adult spawners (USBR, 2008, page 9-25). This model provides some valuable insight, but requires greater consideration of the model assumptions (e.g., linear stream, habitat as primary limiting factor, independence of food resources on flow and temperature, density independence for some life stages) and uncertainties. Otherwise, the use of this model is limited to comparative, rather than absolute, analysis of RPA actions. Further, it would be important to investigate the sensitivity of the model to initial conditions and input data, particularly those prone to measurement error (e.g., number and distribution of spawners) to provide some indication of the reliability of model outputs. While SALMOD has not been thoroughly peer-reviewed, criticisms of similar modeling approaches (e.g., NRC, 2008) have highlighted some key issues with habitat-suitability models (e.g., the need for greater clarity concerning the assumption that habitat is a limiting factor and the need for a thorough assessment of the representativeness of the areas sampled) and have provided extensive discussions of the use of models in an adaptive-management approach, which is relevant to this committee's recommendations. Finally, the NMFS acknowledges that SALMOD is most appropriately applied to large populations that are not sensitive to individual variability and environmental stochasticity (NMFS 2009 page 270), which means that the predictions for the relatively small population in the delta river system are subject to considerable uncertainty. The uncertainties again highlight the need for an adaptive management approach.

The NMFS also used results from the USBR's salmon mortality model (Hydrologic Consultants, Inc., 1996) to examine daily salmon spawning losses for early life stages (pre-spawned eggs, fertilized eggs, and pre-emergent fry) due to exposure of high temperatures. Temperature-exposure mortality criteria for the three life stages are combined with modeled temperature predictions and spawning distribution data to compute percents of salmon spawning losses. Because simulations of river temperatures are run on a daily or shorter time step, downscaling of monthly CalSim-II data is required (Attachment H-1, USBR, 2008). Moreover, the monthly temperature models do not adequately capture the range of daily temperature variability (page 9-109, USBR 2008). In addition, several assumptions (e.g., density independence) and important data limitations (USBR, 2008, page L-6, L-7) challenge the reliability of this model. Finally, while this model has been applied in other systems, it is not thoroughly peer reviewed and no analysis of sensitivity or uncertainty has been performed. Addressing these model shortcomings would help increase confidence in the analyses.

### **Developing, Evaluating, and Applying Best Available Models**

As the agencies work within the constraints of best available science, some recognition of the adequacy and reliability of the models should be reflected in the management decisions by making them adaptive. The following five factors, in particular, need better documentation.

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*1. Incompatible temporal resolution and implications for management decisions.*

The individual models used in this tiered analysis approach have a broad range of temporal resolutions (Figure 4-1). Care must be exercised in such situations so that the linkages of models with different temporal and spatial resolutions do not result in propagation of large errors that may influence decisions derived from the modeling results. For example, CalSim-II uses a monthly time step whereas the DSM2 uses a 15-minute time step. Although the tidal boundary condition in DSM2 is pre-processed at 15-minutes, average monthly flow, simulated by CalSim-II, is provided as the upstream flow boundary condition at many delta inflow points. The linkage of CalSim-II and DSM2 attempts to smooth out the step change in monthly simulated flows (USBR, 2008, pages 9-14, 9-15), but this is not necessarily adequate to simulate the fluctuations of flows within the month. The use of the monthly time step certainly could have a significant influence on such performance measures as OMR flows, particularly when such flows are recommended in RPAs for triggering export curtailments. USFWS and NMFS should provide a comparison of daily versus monthly average simulations of DSM2 for a historical period to ascertain the reliability of using monthly CalSim output as input to DSM2.

The incompatibility of temporal resolutions is particularly important given that flows in the delta are strongly influenced by tides. The flows at such locations as Old River and Middle River are characterized by two flood-ebb cycles per day, with positive and negative values of much larger magnitude than the average net flow at these locations (Gartrell, 2010). In view of the fact that OMR flows have sub-hourly hydrodynamic components, averaging over a longer period such as 5 to 14 days to define the thresholds in the implementation of the RPAs could produce unnecessary changes in water exports. The use of monthly average flows produced by CalSim-II could further add to the concerns regarding the recommended thresholds of OMR flows. In view of these modeling uncertainties, further clarification as to how the modeled OMR flows were used for jeopardy determination and hence for the development and implementation of RPAs is needed.

*2. Inconsistent use of baselines.*

Both biological opinions use historical data along with modeling results of the CALSIM-II scenarios. Study 7.0, which represents the existing condition, is expected to be closest to historical conditions. However, important differences between the two (historical and existing conditions) could exist due to differences in demands and more importantly due to deviations in operations. Because of the simplifying assumptions used in CalSim-II historical simulations, the FWS BO opted to use actual historical data to develop their baseline (FWS, 2008, page 206) and continued to compare historical data with the modeling results of the numerous scenarios described above (see, for example, Figures E-3 through E-19).

The results suggest that often, actual data are very different in magnitude in comparison to Study 7.0 and furthermore, most scenarios (Studies 7, 7.1, 8, and study series 9) are clumped together with relatively small differences between them in relation to the magnitude of differences with the historical data. In view of these differences, the validation of Study 7.0 and consequently others, becomes even more important for the purpose of RPA development.

The use of historical data to make inferences is very typical and appropriate in the biological opinions. However, since the evaluation of project actions and the development of RPAs are based on the evaluation of modeling scenarios, which appear to greatly differ from historical

data, a comparison of the two sets of data (historical and simulated) may incur errors in interpretation. The committee recommends that the biological opinions provide a better justification for the reasonableness of the baseline scenario, Study 7.0, as well as the comparison of scenario results with historical data.

3. *Challenges in calibrating and validating any of the models to historical observations and operations.*

It is a standard practice to ensure the appropriate use of models through the processes of calibration and testing (ASTM, 2008; NRC 2008). Validation of CalSim-II is described in Appendix U of the OCAP BA (USBR, 2008), which provides a comparison of Study 7.0 (existing condition) with the recent historical data. A review of those results shows that there are significant deviations of the historical data from the simulated storages and exports that may be of the same magnitude as the differences between the scenarios being evaluated. Thus, while the tool itself performs well, some questions remain regarding the gross nature of generalized rules used in CalSim-II to operate CVP and SWP systems, relative to actual variability of dynamic operations (USBR, 2008, pages 9-4). In their peer review of the CalSim-II model, Close et al. (2003) suggested that "Given present and anticipated uses of CalSim-II, the model should be calibrated, tested, and documented for "absolute" or non-comparative uses." It is not clear if the agencies that developed the model have responded to this suggestion in a comprehensive manner. As emphasized above, a clear presentation of the realism of Study 7.0 with respect to recent operations or observations would help avoid the criticism as to the results of Study 7.0 as well as other derivatives of it (Studies 7.1, 8.0 and series 9).

The OCAP BA (USBR, 2008) provides sufficient information on the calibration and testing of temperature models, and the time steps vary among models, although all used the monthly output of CalSim-II in predictions. Thus, they appear to be adequate for predicting temperature variation and making comparisons at the monthly time scale. Information on the calibration of DSM2 and PTM is provided in part by DWR, which has been posted online (<http://modeling.water.ca.gov/delta/studies/validation2000/>) results of the calibration of this 1-D, hydrodynamic model of the delta. Based on the information provided, it appears to adequately mimic the historical data at a daily time-scale. However, the DSM2 simulations should demonstrate that the range of negative OMR flows used for calibration covers the high negative flows simulated by CalSim-II for future scenarios. There has been an attempt to test PTM (Wilbur, 2001), but clearly this tool needs further improvements. Wilbur (2001) reports that the existing velocity profiles used in PTM consistently over-predict the field observations (i.e., the predicted velocities exceed the observed velocities).

In addition, with the potential for changes in the historical patterns of climate and hydrology, calibrating models with historical data alone may be less meaningful for projection of future operations. Thus, in addition to providing support for model improvement and adaptive management, a more robust monitoring program will also support calibration and testing of models with more relevant representation of the current and future system. For example, drought-induced low flows of the past several years provide opportunities to calibrate and test models under infrequent but foreseeable conditions. Realistic modeling of the system that incorporates what actually happens in an operational setting with climate outlook will be important in the future.

The biological models such as USBR's mortality model and SALMOD are essentially uncalibrated for the system, and further concerns about these models were addressed in previous sections.

#### *4. Challenges of the Tiered Modeling Approach.*

Temperature, OMR flows, and X2 performance measures are particularly challenged by the tiered modeling approach, with limitations related to data availability and inconsistency in model resolution (spatial and temporal) and complexity (USBR, 2008, page 9-31). However, the use of models may still be beneficial in planning and triggering adaptive management needs. For example, for NMFS implementation of Action II.2 (Lower American River Temperature Management), forecasts will be used to simulate operations and compliance with thermal criteria for specific life stages in months when salmon would be present (NMFS, 2009, page 614). However, if the USBR determines that it cannot meet the temperature requirement, and can demonstrate this through modeling of allocations and delivery schedules, consultation with the NMFS will occur. In this example, modeling results are used to evaluate the feasibility of meeting criteria, rather than trying to derive direct loss estimates. The RPA then leads to a process for adaptive management of the temperature operations based on updates to the hydrologic information. Thus, despite the particularly challenging example of managing temperature, the use of models appears to have allowed for flexibility.

However, no qualitative or quantitative analysis of the magnitude of errors across these model linkages and the resulting uncertainties are presented. While not required for the justification of RPAs, failing to consider error propagation across the models makes it difficult to evaluate the reliability of meeting the RPAs and their ability to provide the intended benefits.

#### *5. Lack of an integrative analysis of RPAs*

Numerous RPA actions proposed in both biological opinions cover new projects as well as operational changes. However, the information provided to the committee did not include a comprehensive analysis of all RPA actions, either individually or, more important, jointly, with respect to their ability to reduce the risks to the fish or to estimate system-wide water requirements. Clearly, the agencies lacked properly linked operations/hydrodynamic/biological models at the appropriate scales for RPA development. The agencies should be complimented for using historical data as well as best available science when modeling was not adequate. However, the proposed RPAs could incur significant water supply costs, and there should be an attempt to provide an integrative analysis of the RPAs with quantitative tools. The committee also acknowledges the challenges associated with estimating water requirements for some RPAs, particularly those based on adaptive management strategies, but explicit and transparent consideration of water requirements and biological benefits of specific actions and of subsets of actions would provide the basis for a smoother implementation of the RPAs.

The committee recommends that the agencies consider investigating the use of CalSim-II and other quantitative tools (e.g., PTM, life-cycle models) to simulate appropriate RPA actions of both biological opinions. These linked models would allow an integrated evaluation of the biological benefits and water requirements of individual actions and suites of actions, and the identification of potential species conflicts among the RPAs. Although not required by the ESA, such



an integrative analysis would be helpful to all concerned to evaluate the degree to which the RPAs are likely to produce biological benefits and to quantify the water requirements to those who might be affected by the future actions of the two biological opinions. In addition to further model development, efforts to improve documentation of model use would be beneficial. Documentation should include a record of the decisions, assumptions, and limitations of the models (e.g., NRC, 2008).

Thus, we find that, while used appropriately in this analysis, the PTM and biological models for both salmon and smelt should be further developed, evaluated, and documented. The models show promise for being quantitative tools that would allow for examination of alternative ideas about key relationships underlying the RPAs. In addition, complete life-cycle models capable of being linked to these other models should be developed. Although developing, testing, and evaluating such models would require a significant investment, the committee judges that the investment would be worthwhile in the long term.

## CONCLUSION

Modeling is useful for understanding the system as well as predicting future performance. As long as modelers understand and accurately convey the uncertainties of models, they can provide valuable information for making decisions. The committee reviewed the models the agencies used to determine to what degree they used the models in developing the RPAs. The biological opinions have used results of a variety of operations, hydrodynamic, and biological models currently available to them for RPA development. However, the agencies have not developed a comprehensive modeling strategy that includes the development of new models (e.g., life-cycle and movement models that link behavior and hydrology); such models may have provided important additional information for the development of RPAs. Nonetheless, the agencies should be complimented for combining the available modeling results with historical observations and peer-reviewed literature. The committee also compliments the agencies for the extensive discussion and presentation of the rationale for the particular types of actions proposed in the RPAs.

The committee concluded that as far as they went, despite flaws, the individual models were scientifically justified, but that they needed improvements and that they did not go far enough toward an integrated analysis of the RPAs. The committee has raised several important issues related to the modeling process used, including the model scale and management information; the adequacy of models, particularly the particle-tracking model and the lack of life-cycle models; incompatibilities in both temporal and spatial scales among the models and between model output and the scale of the RPA actions; the use of baselines; inadequate calibration and testing of modeling tools (in some cases); and inadequate model documentation. A more-thorough, integrative evaluation of RPA actions with respect to their likelihood of reducing adverse effects on the listed fishes and their likely economic consequences, coupled with clear documentation would improve the credibility and perhaps the acceptance of the RPAs. Thus the committee concluded that improving the models by making them more realistic and by better matching the scale of their outputs to the scale of the actions, and by extending the modeling to be more comprehensive and to include features such as fish life cycles would improve the agencies' abilities to assess risks to the fishes, to fine-tune various actions, and to predict the effects of the actions. Three-dimensional models are more expensive and time-consuming than simpler models, but

they can contribute valuable understanding if used appropriately (e.g., Gross et al., 1999; Gross et al. 2009).

In addition, the committee concludes that opportunities exist for developing a framework to improve the credibility, accountability, and utility of models used in implementing the RPAs. The framework will be particularly important for some of the more-complex actions, such as those involving Shasta and San Joaquin storage and flows, which rely heavily on model predictions. The committee plans to address such issues, including the framework mentioned above, in more detail in its second report.

## 5

### Other Stressors

#### INTRODUCTION

Declines in the listed species must be considered in the context of the many changes that are occurring in the “baseline” factors in the region. While the CVP and SWP pumps kill fish, no scientific study has demonstrated that pumping in the south delta is the most important or the only factor accounting for the delta-smelt population decline. Therefore, the multiple other stressors that are affecting fish in the delta environment as well as in the other environments they occupy during their lives must be considered, as well as their comparative importance with respect to the effects of export pumping. These factors and their impacts, only some of which originate within the delta itself, will be described in greater detail in the committee’s second report. Some are described here to highlight their potential importance and to underscore that a holistic approach to managing the ecology of imperiled fishes in the delta will be required if species declines are to be reversed. The factors described here are not meant to be exhaustive, but are intended to demonstrate that the effects of these factors are numerous and, in some cases, not only potentially very important but also under-characterized. Moreover, while individual relationships with these stress factors are generally weakly understood, the cumulative or interactive effects of these factors with each other and with water exports are virtually unknown and unexplored (Sommer et al., 2007).

#### CONTAMINANTS

It has long been recognized that contaminants are present in the delta, have had impacts on the fishes, and may be increasing (Linville et al., 2002; Davis et al., 2003; Edmunds et al., 1999). Contamination of runoff from agricultural use of pesticides has been documented and has been shown to affect invertebrates and other prey, as well as on some life stages of fish (e.g., Kuivila and Foe, 1995; Giddings, 2000; Weston et al., 2004). Kuivila and Moon (2004) found that larval and juvenile delta smelt coincide with elevated levels of pesticides in the spring. Pyrethroid insecticide use has increased in recent years. Such insecticides have been found in higher concentrations in runoff, and may be toxic to macroinvertebrates in the sediment (Weston et al., 2004, 2005); it is toxic to the amphipod *Hyaella azteca*, which is found in the delta (Weston and Lydy, 2010). The use of pyrethroids increased substantially in the recent years during which the decline of pelagic organisms in the delta became a serious concern as compared to earlier decades (Oros and Werner, 2005). Among other identified contaminants that may also have effects are selenium and mercury. Histopathological studies have shown a range of effects, from little to no effect

(Foott et al., 2006) to significant evidence of impairment depending on species, timing, and contaminant biomarker.

### ALTERED NUTRIENT LOADS

Nutrients have received recent attention as a potential stress factor for phytoplankton, zooplankton, and fish populations for several reasons. First, research by Wilkerson et al. (2006) and Dugdale et al. (2007) found that phytoplankton (diatom) growth in mesocosm experiments did not occur under *in situ* ammonium levels, and only increased when ammonium levels were reduced. They interpreted this finding to mean that diatom growth was suppressed under ambient ammonium levels, and only after ammonium concentrations began to be drawn down did diatoms begin to use nitrate, an alternate nitrogen form, and then proliferate.

With respect to nutrient loading effects, declines in phosphate loading may be related to declines in chlorophyll-*a* throughout the Sacramento-San Joaquin delta (Van Nieuwenhuysse, 2007). While these results show that chlorophyll-*a* in the water column declined coincident with the decline in phosphate in 1996, phosphate levels, both inorganic and organic, are not at extremely low concentrations in the water. Nevertheless, the effects of the rapid and substantial change in the ratio of inorganic nitrogen to inorganic phosphate in the system have yet to be adequately explored.

### CHANGES IN FOOD AVAILABILITY AND QUALITY

Significant changes in the food web may have affected food abundance and food quality available to delta smelt. From changes in zooplankton to declines in chlorophyll to increases in submerged aquatic vegetation, these changes have enormous effects on the amount and quality of food potentially available for various fish species (e.g., Muller-Solger et al., 2006; Bouley and Kimmerer, 2006). The benthic community was significantly changed after the overbite clam, *Corbula amurensis*, became dominant in the late 1980s; such changes have effects on food availability that may cascade through the food web to affect the abundance of delta smelt.

In addition to changes in food availability, other changes in the food web have had potentially large impacts on smelt. Since 1999, blooms of the cyanobacterium *Microcystis* have increased and are especially common in the central delta when water temperatures exceed 20°C (Lehman et al., 2005). Although delta smelt may not be in the central delta during the period of maximum *Microcystis* abundance, during dry years the spread of *Microcystis* extends well into the western delta so that the zone of influence may be greater than previously thought (Lehman et al., 2008). Most recently it has been demonstrated that the *Microcystis* toxin, microcystin, not only is present in water and in zooplankton, but histopathological studies have shown liver tissue impacts on striped bass and silversides (Lehman et al., 2010).

### INTRODUCED FISHES

The delta is a substantially altered ecosystem, and that applies to the fish species present as well. Some environmental changes likely enhance the spread of nonnative species (for example

warm, irregularly flowing water around dams or diversions can favor warm-water species) (FWS 2008 p. 147), as can the presence of riprap to support banks (Michny and Hampton, 1984). Thus, the spread of nonnative species may be, at least in part, an effect of other ecosystem changes. Once nonnative species become established, they further alter the ecosystem. Some species, such as American shad (*Alosa sapidissima*) and striped bass (*Morone saxatilis*), native to the Atlantic and Gulf coasts of North America, have been present in the delta region since the late 19<sup>th</sup> century (Lampman, 1946; Moyle, 2002). Striped bass (along with the native Sacramento pikeminnow, *Ptychocheilus grandis*) have been implicated as predators on juvenile Chinook salmon, especially when they congregate below the Red Bluff Diversion Dam (Tucker et al., 2003) and other structures; at the Suisun Marsh Salinity Control Gates they were the dominant predator on juvenile Chinook salmon (Edwards et al., 1996; Tillman et al., 1996). Other introductions are more recent, and some might be more threatening to native species. For example, the silverside, *Menidia beryllina*, is becoming more widespread in the delta and likely preys on juvenile delta smelt (Moyle, 2002) or competes for similar copepod prey (Bennett and Moyle, 1996). Largemouth bass (*Micropterus salmoides*) and many other members of its family (Centrarchidae), along with various species of catfish (family Siluridae), native to the Mississippi and Atlantic drainages, also are increasing, while the lone member of the centrarchid family that was native to the region, the Sacramento perch (*Archoplites interruptus*), no longer occurs in the delta (Moyle 2002). All the above species include fish in their diets to a greater or lesser degree, including various life stages of delta smelt at times. In addition, other species, such as common carp (*Cyprinus carpio*) and threadfin shad (*Dorosoma petenense*), are not significant piscivores, but likely compete with delta smelt for food or otherwise affect their environment. Finally, the wakasagi (*Hypomesus nipponensis*), an introduced Japanese smelt very similar to the delta smelt, is becoming increasingly widespread in the delta. It interbreeds and competes with the delta smelt and might prey on it, and its presence in the delta complicates the assessment of delta smelt populations and salvage because it is so similar to the delta smelt that it is not easy to distinguish between the two species (Moyle, 2002). Delta smelt have co-existed with many of these alien fishes for more than 100 years before the recent declines, and so the decline of smelt cannot be attributed entirely to their presence, but some species have increased recently and their effects on smelt and salmonids—including on the potential for smelt populations to recover—have not been well studied.

#### IMPEDIMENTS TO PASSAGE, CHANGES IN OCEAN CONDITIONS, FISHING, AND HATCHERIES

Clark (1929) estimated that 80% of the original spawning habitat available to Chinook salmon in California's Central Valley had been made unavailable by blockages, mainly dams, by 1928. A similar loss of habitat has occurred for Central Valley steelhead as well (Lindley et al., 2006). Dams, diversion points, gates, and screens also affect green sturgeon. Ocean conditions vary, and in general they fluctuate between periods of relatively high productivity for salmon and lower productivity (Hare et al., 1999; Mantua and Hare, 2002). Lindley et al. (2009) concluded that ocean conditions have recently been poor for salmon, although there has been a long-term, steady deterioration in freshwater and estuarine environments as well. Sport and commercial fishing for salmon, sturgeon, and steelhead has been tightly regulated both at sea and in freshwater, and in 2008, there was a complete closure of the commercial and recreational fishery for

Chinook salmon (NMFS, 2009, page 145). However, Chinook salmon make very long oceanic migrations and their bycatch in other fisheries cannot be totally eliminated (NRC 2005). Hatchery operations have been controversial, but it is almost impossible to operate hatcheries without adverse genetic and even ecological effects on salmon (NRC, 2004b; NMFS, 2009, page 143) or steelhead (NMFS, 2009, page 143).

## **DISEASES**

Histopathological studies have revealed a range of diseases of potential concern in the delta. For example, parasites have been found in threadfin shad gills, but not at a high enough infection rate to be of alarm, but evidence from endocrine disruption analyses shows some degree of intersex delta smelt males, having immature oocytes in the testes (Teh et al., unpublished data). Other investigators have found myxosporean infections in yellowfin goby in Suisun Marsh (Baxa et al., unpublished data). These and other measures suggest that parasitic infections, viral infections, or other infections are affecting fish, and that interactions with other stressors, such as contaminants, may be having increasing effects on fish.

## **CLIMATE CHANGE**

Climate change could have severe negative consequences for the listed fishes. There are at least three reasons why this is of concern. First, the recent meteorological trend has runoff from the Sierra Nevada shifting from spring to winter as more precipitation falls as rain rather than snow, and as snowmelt occurs earlier and faster because of warming, increasing the likelihood and frequency of winter floods and altered hydrographs, and thus changes in the salinity of delta water (Roos, 1987, 1991; Knowles and Cayan, 2002, 2004). Alteration of precipitation type and timing of runoff may affect patterns in reproduction of the smelt and migration of salmon and sturgeon (Moyle, 2002). Additionally, effects of sea-level rise will increase salinity intrusion further upstream, again impacting fish distributions that rely on salinity gradients to define habitat; their habitat will be reduced. Lastly, as climate warms, so too does the water. This will impact fish distributions in several ways. Temperature is a cue for many biological processes, so many stages of the life cycle are likely to be affected. Moreover, warmer water will mean proportionately more days in which the temperature is in the lethal range, ~25°C (Swanson et al., 2000). The effects of these climate consequences are less suitable habitat for delta smelt in future years as well as threats to the migration of anadromous species like salmon and sturgeon.

## **CONCLUSION**

Based on the evidence summarized above, the committee agreed that the adverse effects of all the other stressors on the listed fishes are potentially large. Time did not permit full exploration of this issue in this intense first phase of the committee's study. The committee will explore this issue more thoroughly in its second report.

## 6

### Assessment of the RPAs

#### INTRODUCTION

The RPAs include many specific actions that fall into several categories for each species. The RPA in the FWS biological opinion for delta smelt focuses on limiting OMR negative flows in winter to protect migrating adults (Actions 1 and 2) and to protect larval smelt (Action 3) from entrainment at the export pumps. It also aims to protect estuarine habitat for smelt during the fall by managing the position of X2 (Action 4). Action 5 is to protect larval and juvenile smelt from entrainments by refraining from installing the Head of Old River Barrier (HORB) depending on conditions; if the HORB is installed, then the Temporary Barrier Project's gates would remain open. Finally, Action 6 calls for restoration and construction of 8,000 acres of intertidal and tidal habitat.

The RPA in the NMFS biological opinion for Chinook salmon, Central Valley steelhead, and green sturgeon is divided into far too many specific actions (72) to summarize here, but the biological opinion describes 10 major effects of the RPA on the listed species. They include management of storage and releases to manage temperature in the Sacramento River for steelhead and salmon; maintaining flows and temperatures in Clear Creek for spring-run Chinook salmon; opening gates at the Red Bluff Diversion Dam (RBDD) at critical times to promote passage for salmon and sturgeon; improving rearing habitat for salmon in the lower Sacramento River and in the northern delta; closure of the gates of the Delta Cross Channel (DCC) at critical times to keep juvenile salmon and steelhead out of the interior delta and instead allowing them to migrate out to sea; limiting OMR negative flows to avoid entrainment of juvenile salmon; increased flows in the San Joaquin River and curtailment of water exports to improve survival of San Joaquin steelhead smolts, along with an acoustic tagging program to evaluate the effectiveness of this action; flow and temperature management on the American River for steelhead; a year-round flow regime on the Stanislaus River to benefit steelhead; and the development of Hatchery Genetics Management Plans at the Nimbus (American River) and Trinity River hatcheries to benefit steelhead and fall-run Chinook salmon.

Rather than review every action and every detail, the committee comments on the broader concepts at issue and general categories of actions. Three important goals are to consider how well the RPAs are based on available scientific information; whether there are any potential RPAs not adopted that would have lesser impacts to other water uses as compared to those adopted in the biological opinions, and would provide equal or greater protection for the listed fishes; and whether there are provisions in the FWS and NMFS biological opinions to resolve potential incompatibilities between them. In addition we assess the integration of the RPAs within and across species and across all actions.

Addressing these goals requires explicitly recognizing the fundamental differences in the main conflicting arguments. There is concern, on one hand, that the increasing diversions of water from the delta over a period of many decades and the alteration of the seasonal flow regime

have contributed to direct effects on populations of native species through mortality at the pumps, changes in habitat quality, and changes in water quality; and to indirect, long-term effects from alterations of food webs, biological communities, and delta-wide habitat changes. The RPAs propose that their collective effects will offset the impacts of the proposed operations of the SVP and the CWP by manipulating river flows and diversions, along with other actions. An alternative argument is that the effects of water diversions on the listed fishes are marginal. It is argued that the changes imposed by the RPAs would result, therefore, only in marginal benefits to the species, especially now that the delta environment and its biota have been altered (to a new ecological baseline) by multiple stressors. Those stressors obviously include water exports, but this argument suggests a smaller role for water exports in causing the fish declines and hence a smaller role for managing the exports to reduce or halt those declines. However, even with the copious amounts of data available, it is difficult to draw conclusions about what variable or variables are most important among the pervasive, irregular, multivariate changes in the system that have occurred over the past century.

The committee's charge was to provide a scientific evaluation, not a legal one, and that is what is presented below. Nothing in this report should be interpreted as a legal judgment as to whether the agencies have met their legal requirements under the ESA. The committee's report is intended to provide a scientific evaluation of agency actions, to help refine them, and to help the general attempt to better understand the dynamics of the delta ecosystem, including the listed fishes.

## **DELTA SMELT**

### **Actions Related to Limiting Flow Reversal on the Old and Middle Rivers (OMR)**

The general purpose of this set of actions is to limit the size of the zone of influence around the water-diversion points at critical times. The actions would limit negative OMR flows (i.e., toward the pumps) by controlling water exports during crucial periods in winter (December through March) when delta smelt are expected to be in the central delta (FWS, 2008). The data supporting this approach show an increase in salvage of delta smelt as OMR flows become more negative. However, there are important disagreements about how to express salvage and the choice of the trigger point or threshold in negative flows above which diversions should be limited.

An important issue is whether and how salvage numbers should be normalized to account for delta smelt population size. An increase in salvage could be due to an increase in the number of smelt at risk for entrainment, an increase in negative flows that bring smelt within range of the pumps, or both. Thus, an increase in salvage could reflect a recovery of the smelt population or it could reflect increasingly adverse flows toward the pumps for the remaining smelt population. The biological opinion (FWS, 2008) recognizes this relationship, and that is why salvage is used to calculate the percentage of the population entrained, rather than absolute numbers (FWS, 2008, Figures E-4 and E-5). However, the historical distribution of smelt on which the relationship with OMR flows was established no longer exists. Delta smelt are now sparsely distributed in the central and southern delta ([www.dfg.ca.gov/delta/data](http://www.dfg.ca.gov/delta/data)), and pump salvage also has been extremely low, less than 4% of the 50-year average index. Since 2005, a significant portion of the remaining smelt population, 42% (Sommer et al., 2009), is in the Cache Slough complex to



the north and is therefore largely isolated from the central delta. These changes in the distribution of delta smelt increase the uncertainty surrounding current estimates of the population and its likely response to alterations in delta hydraulics, and until the numbers of smelt rise closer towards the pre-2005 levels, they do not provide a reliable index for incorporation into models for the effects of pumping on smelt salvage.

Different authors have taken different statistical approaches to analyzing the data to interpret the relationship between OMR flows and effects on smelt, and thus chose different thresholds at which OMR flows should be limited. The choice of the limit to negative flows in the RPA gives the benefit of the doubt to the species. But there are important uncertainties in the choice. The different trigger points suggested by the different analyses have important implications for water users. The committee concludes that until better monitoring data and comprehensive life-cycle and fish-movement models are available, it is scientifically reasonable to conclude that high negative OMR flows in winter probably adversely affect smelt. We note as well that actions 1 and 2 of the FWS RPA are adaptive in that they depend for their implementation on a trigger related to measured turbidity and measured salvage numbers; they also may be suspended during three-day average flows of 90,000 cfs or greater in the Sacramento River at Rio Vista and 10,000 cfs or greater in the San Joaquin River at Vernalis. However, the portion of the existing smelt population in the Cache Slough complex appears not to move downstream towards the brackish areas (Sommer et al., 2009) and thus they should be largely insulated from the effects of the OMR flows and actions 1 and 2.

The biological benefits and the water requirements of this action are likely to be sensitive to the precise values of trigger and threshold values. There clearly is a relationship between OMR flows and salvage rates, but the available data do not permit a confident identification of the threshold values to use in the action, and they do not permit a confident assessment of the benefits to the population of the action. As a result, the implementation of this action needs to be accompanied by careful monitoring, adaptive management, and additional analyses.

Some monitoring and reporting is required in RPA component 5 (monitoring and reporting). However, more should be required, recognizing limits to the agencies' and operators' human and fiscal resources. Given the uncertainties in any choice of a trigger point, a carefully designed study that directly addresses measures of the performance (effectiveness) of the action is essential. This could include monitoring of variables like salvage at the pumps and numbers of delta smelt adults and larvae at the south ends of OMR channels during pumping actions, but it should also include other variables that might affect both salvage and populations. History shows that salvage and delta smelt indices have been insufficient for such an analysis alone, partly because the populations are small and partly because of the uncertainties in the salvage numbers (e.g., to what degree do they accurately reflect mortality, and to what degree are they affected by sampling error?). This deficiency in the data needs to be remedied. But other "proximate" measures such as monitoring of flows over the tidal cycle between and during the pumping limitations could help to understand the driving mechanism for the predicted entrainment mortality associated with pumping. Measuring mean daily discharges also is not sufficient. Temperature, salinity, turbidity, and possibly other environmental factors should also be monitored at appropriate scales as this action is implemented, to determine the availability of suitable habitat in the south delta during periods of reduced pumping. Information also is needed on how fish movement is affected by the immediate water-quality and hydraulic environment they experience. Because the effectiveness of the pumping needs to be expressed in terms of the population, the influence of pumping needs to be identified in more life-stage and area specific measures. In particular, the

relevance of the Cache Slough complex needs to be resolved in assessing the effectiveness of pumping restrictions. In addition, because uncertainty is high regarding several aspects of this action, it would be helpful to include an accounting of the water requirements. Ongoing evaluation of performance measures could ultimately reduce the water requirements of actions and increase the benefits to the species. Addressing the effectiveness of the proposed actions on a long-term basis could also support consensus conclusions about the effectiveness of specific actions and increase public trust. To the degree that such studies could be jointly planned and conducted by the agencies and other interested parties, transparency and public trust would be enhanced.

## **X2 Management for Delta Smelt**

Although the mean position of X2, the isohaline (contour line of equal salinity) of total salinity 2, is a measure of the location of a single salinity characteristic, it is used in this system to indicate the position and nature of the salinity gradient between the Sacramento River and San Francisco Bay. The position of X2 is measured in kilometers from the Golden Gate Bridge. In the RPA, it has been used by the agencies as a measure of the amount of smelt habitat—influenced by salinity as well as temperature and turbidity, which are also driven by the river-estuary interaction—and thus to approximate the seasonal extent and shifting of that habitat within the ecosystem. By this reasoning, the position of X2 affects the size of delta smelt habitat (Feyrer et al., 2007; Kimmerer, 2008a).

The RPA's action 4 (FWS, 2008, page 369) proposes to maintain X2 in the fall of wet years at 74 km east of the Golden Gate Bridge and in above-normal years at 81 km east. (The action was restricted to wetter years in response to consultation with the NMFS, which expressed concern that in drier years, this action could adversely affect salmon and steelhead [memorandum from FWS and NMFS to this committee on coordination, January 15, 2010].) The action is to be achieved primarily by releases from reservoirs. The objective of the component is to manage X2 to increase the quality and quantity of habitat for delta smelt growth and rearing.

The relationship between the position of X2 and habitat area for delta smelt, as defined by smelt presence, turbidity, temperature, and salinity (Nobriga et al, 2008; Feyrer et al., in review), is critical in designing this action. A habitat-area index was derived from the probability of occurrence estimates for delta smelt (fall mid-water trawl survey, FMT) when individuals are recruiting to the adult population. Presence/absence data were used because populations are so small that quantitative estimates of populations probably are unreliable. The authors show a broad relationship between the FMT index and salinity and turbidity, supporting the choice of these variables as habitat indicators. The statistical relationship is complex. When the area of highly suitable habitat as defined by the indicators is low, either high or low FMT indices can occur. In other words, delta smelt can be successful even when habitat is restricted. More important, however, is that the lowest abundances all occurred when the habitat-area index was less than 6,000 ha. This could mean that reduced habitat area is a necessary condition for the worst population collapses, but it is not the only cause of the collapse. Thus, the relationship between the habitat and FMT indexes is not strong or simple. Above a threshold on the x-axis it allows a response on the y-axis (allows very low FMT indices).

The controversy about the action arises from the poor and sometimes confounding relationship between indirect measures of delta smelt populations (indices) and X2. The weak statistical

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relationship between the location of X2 and the size of smelt populations makes the justification for this action difficult to understand. In addition, although the position of X2 is correlated with the distribution of salinity and turbidity regimes (Feyrer et al., 2007), the relationship of that distribution and smelt abundance indices is unclear. The X2 action is conceptually sound in that to the degree that habitat for smelt limits their abundance, the provision of more or better habitat would be helpful. However, the examination of uncertainty in the derivation of the details of this action lacks rigor. The action is based on a series of linked statistical analyses (e.g., the relationship of presence/absence data to environmental variables, the relationship of environmental variables to habitat, the relationship of habitat to X2, the relationship of X2 to smelt abundance), with each step being uncertain. The relationships are correlative with substantial variance being left unexplained at each step. The action also may have high water requirements and may adversely affect salmon and steelhead under some conditions (memorandum from FWS and NMFS, January 15, 2010). As a result, how specific X2 targets were chosen and their likely beneficial effects need further clarification.

The X2 action for delta smelt includes a requirement for an adaptive management process that includes evaluation of other possible means of achieving the RPA's goal and it requires the establishment and peer review of performance measures and performance evaluation. It also requires "additional studies addressing elements of the habitat conceptual model" to be formulated as soon as possible and to be implemented promptly. Finally, it requires the FWS to "conduct a comprehensive review of the outcomes of the Action and the effectiveness of the adaptive management program ten years from the signing of the biological opinion, or sooner if circumstances warrant." This review is to include an independent peer review; the overall aim is to decide whether the action should be continued, modified, or terminated. It is critical that these requirements be implemented in light of the uncertainty about the biological effectiveness of the action and its high water requirements.

### **Tidal Habitat Action**

The proposed RPA calls for the creation or restoration of 8,000 acres of intertidal and associated subtidal habitat in the delta and in Suisun Marsh. A separate planning effort also is under way for Suisun Marsh. The justification provided in the biological opinion is that the original amount of approximately 350,000 acres of tidal wetland has been reduced to less than 10,000 acres today, that the near-complete loss of tidal wetlands threatens delta smelt by reducing productivity at the base of the food web, and that delta smelt appear to benefit from the intertidal and subtidal habitat in Liberty Island, which includes tidal wetlands. This action has been less controversial than the others because it does not directly affect other water users.

However, although the concept of increasing and improving habitat to help offset other risks to smelt is conceptually sound, the scientific justification provided in the biological opinion is weak, because the relationship between tidal habitat and food availability for smelt is poorly understood, and it is inadequate to support the details of the implementation of this action. The opinion notes the importance of high-quality food sources to delta smelt and the association of these food resources with tidal habitats (including wetlands), and it references recent monitoring data from Liberty Island showing that such freshwater tidal habitats can be a source of high-quality phytoplankton that contribute to the pelagic food web downstream (p. 380). However,

the specifics of which attributes of tidal habitat are essential to providing these food sources are not addressed.

In addition, the California Department of Fish and Game has raised questions about the details of this action (Wilcox, 2010). They include questions about the relative benefits of vegetated tidal marsh as opposed to open water; the extent to which invasive clams may divert new primary production; the amount of suitable productivity exported from restoration areas; the potential effect of the restored habitat on predation; the importance of productivity from vegetated tidal marsh directly or indirectly to the smelt; and the degree to which other fish species might use the habitat, possibly to the detriment of the smelt. In briefings to the panel, the importance of ongoing studies in resolving these issues was identified. Identifying the characteristics of the "intertidal and associated subtidal habitat" that the action is expected to produce is needed to ensure that expectations of the outcomes, in terms of both habitat type and species benefits, are clear to all. The relative roles of areas of emergent vegetation, unvegetated intertidal and shallow, highly turbid subtidal habitat must be identified for the action to be effectively implemented.

The committee recommends that this action be implemented in phases, with the first phase to include the development of an implementation and adaptive management plan (similar to the approach used for the floodplain habitat action in the NOAA biological opinion), but also to explicitly consider the sustainability of the resulting habitats, especially those dependent on emergent vegetation, in the face of expected sea-level rise. In addition, there should be consideration of the types and amounts of tidal habitats necessary to produce the expected outcomes and how they can be achieved and sustained in the long term. More justification for the extent of the restoration is needed. The committee supports the monitoring program referred to in Action 6, and appropriate adaptive management triggers and actions.

## **SALMONIDS AND STURGEON**

The NMFS RPA for salmon, steelhead, and green sturgeon is a broad complex of diverse actions spanning three habitat realms: tributary watersheds, the mainstem Sacramento and San Joaquin Rivers, and the delta. On balance, the actions are primarily crafted to improve life-stage-specific survival rates for salmon and steelhead, with the recognition that the benefits also will accrue to sturgeon. The committee agrees with this approach. The conceptual bases of the strategies underpinning many of the individual actions are generally well-founded, although the extent to which the intended responses are likely to be realized is not always clear. Given the absence of a clear, quantitative framework for analyzing the effects of individual and collective actions, it is difficult to make definitive statements regarding the merits of such a complex RPA. Indeed, absent such an analysis, the controversial aspects of some of the RPA actions could detract from the merits of the rest of the RPA.

The assortment of actions among the three habitat realms (watersheds, mainstem rivers, and delta) is designed to improve survival and to enhance connectivity throughout this system. This approach is consistent with the contemporary scientific consensus on improving ecosystem functioning as a means to improve productivity of anadromous and other migratory species (e.g., Williams 2005; NRC 1996, 2004a, 2004b). Watershed actions would be pointless if mainstem passage conditions connecting the tributaries to, and through, the delta were not made satisfactory.

## Watershed and Mainstem River Actions

Watershed-level actions that are implemented in the tributaries are organized and formulated to meet the needs of specific listed populations in that system. The actions target limiting factors specific to those locales and populations. In general, the rationale for conducting the actions appears to be well-founded. However, it is difficult to ascertain to what extent, or even whether, the collective actions will appreciably reduce the risk to the fishes within the watershed or throughout the entire river system. We suggest that inclusion of some type of quantitative analysis using a tool like Ecosystem Diagnosis and Treatment (EDT) model during the planning process may have provided an even stronger justification for the set of actions selected (<http://jonesandstokes.com/>). We understand there is a recent application of EDT in the lower San Joaquin River, by Jones & Stokes, thus providing a precedent for its use in California's Central Valley. EDT is presented here as an example of a quantitative modeling approach that integrates the effects of various actions to produce relative changes in productivity and abundance. The committee emphasizes the need for a quantitative assessment framework, and does not necessarily specifically advocate the use of EDT.

The RPA also prescribes actions to improve mainstem passage conditions, most notably at the Red Bluff Diversion Dam (RBDD). The objective is to provide unobstructed upstream passage at the RBDD, to ensure more efficient access of adult salmonids to restored watersheds, and access for adult sturgeon to spawning grounds. Without such actions connectivity could not be fully realized. Furthermore, the passage improvement at the diversion dam, in combination with increased water delivery from storage reservoirs, is expected to improve smolt survival during downstream migration. This component is well justified scientifically, although the absence of a system-wide salmon survival model limits our ability to evaluate the extent to which this action contributes to improved survival for the populations in question.

## Smolt Survival Near and Through the Delta

The net survival of salmonid smolts through the mainstem rivers and the delta under different water-management operations is of keen interest. Several RPA actions are intended to improve survival of the juveniles as they migrate seaward. Some of these actions have significant water requirements, and so they are controversial. The common goal of these actions is improve smolt survival by retaining a high proportion of the migrating smolt population in the mainstem Sacramento and San Joaquin Rivers. This involves two general approaches: block entrances to the interior delta, or manipulate currents in major channels to reduce the transport of smolt towards the pump facilities and possible entrainment or locations where they may be lost to predation, starvation, or disease. Here we focus on three pivotal actions: the closure of the Delta Cross Channel, the manipulation of OMR flows, and water-management actions in the lower San Joaquin River.

### *Delta Cross Channel (DCC)*

As smolts migrate seaward from the upper Sacramento River they encounter the DCC near Walnut Grove. The DCC can at times draw large volumes of water from the Sacramento River,

and some of the smolts follow that current toward the interior delta, where salmon mortality is high.

The objective of this action is to physically block the entrance of the DCC at strategic times during the smolt migration, thereby preventing access to the interior delta. This is a long-standing action that appears to be scientifically justified. However, Burau et al. (2007) estimated that when the DCC gates are open, approximately 45 percent of the Sacramento River flow measured at Freeport is redirected into the delta interior through the DCC and Georgiana Slough. The salmon action (Action Suite IV.1), which under certain triggers requires prolonged closure of the DCC gates from October 1 through June 15, must also consider the effects on delta smelt. The Smelt Working Group (notes from June 4, 2007 meeting) concluded that there could be a small beneficial effect on delta smelt from having the DCC gates open from late May until mid-June.

Although this action does not appear to constitute an important conflict between the needs of smelt and salmon, it illustrates the potential for conflict among the two opinions and the need for closer integration of the actions within the delta that have consequences for more than one of the listed species. This is an example where a systematic analysis of the implications for both species of actions would seem to be a scientific requirement.

### Managing OMR Flows for Salmonids

This RPA action (IV.2.3, Old and Middle River Flow Management) also seeks to limit smolt excursion into part of the delta associated with high smolt mortality, but it does so by manipulating current direction and intensity within the Old and Middle River (OMR) drainages. The objective is to reduce current velocity toward the SWP and CVP facilities, thereby exposing fewer smolts to pump entrainment and being drawn into other unfavorable environments.

To accomplish the objective, the action calls for, reducing exports from January 1 through June 15, as necessary, to limit negative OMR flows to -2,500 to -5,000 cfs, depending on the presence of salmonids. The reverse flow will be managed within this range to reduce flows toward the pumps during periods of increased salmonid presence. The flow range was established through correlations of OMR flow and salmon entrainment indices at the pumps, and from entrainment proportions derived using the particle-tracking model (PTM). While the flow management strategy is conceptually sound, the threshold levels needed to protect fish is not definitively established. The response of loss at the pumps to OMR flow (e.g. figure 6-65 from NMFS, 2009) does not suggest a significant change in the vicinity of the flow triggers, but it does suggest that the loss rate increases exponentially above the triggers. The PTM suggests a gradual linear response in the vicinity of the trigger. However, no analysis was presented for the entrainment rate above the trigger (Figure 6-68 from NMFS, 2009), and it is not clear whether the salvage *rates* as well as salvage numbers were modeled. Therefore, the committee is unable to evaluate the validity of the exponential increase in loss rate above the trigger. Uncertainty in the effect of the flow triggers needs to be reduced, and more flexible triggers that might require less water should be evaluated.

The committee concludes that the strategy of limiting net tidal flows toward the pump facilities is sound, but the support for the specific flows targets is less certain. In the near-term telemetry-based smolt migration and survival studies (e.g. Perry and Skalski, 2009) should be used to improve our understanding of smolt responses to OMR flow levels. Reliance on salvage indices or the PTM results alone is not sufficient.

Additionally, there is little direct evidence to support the position that this action alone will benefit the San Joaquin salmon, unless it is combined with an increase in San Joaquin River

flows. Furthermore, we understand this and other flow management actions are coordinated with the delta smelt actions. But we found no quantitative analysis that integrates across the actions to systematically evaluate their aggregate effects on both salmonids and smelt. Understanding those interactions will benefit from the development and use of multiple single-species models, including movement models.

### Managing Exports and Flows in the San Joaquin River

The objective of this action (IV.2.1) is to reduce the vulnerability of emigrating Central Valley steelhead within the lower San Joaquin River to entrainment into the channels of the south delta and at the pumps by increasing the inflow-to-export ratio. It seeks to enhance the likelihood of salmonids' successfully exiting the delta at Chipps Island by creating more suitable hydraulic conditions in the mainstem of the San Joaquin River for emigrating fish, including greater net downstream flows.

The action has two components: reducing exports, and augmenting San Joaquin River flows at Vernalis. The rationale that increasing San Joaquin inflows to the delta will benefit smolt survival through this region of the delta is based on data from coded-wire tags on smolts. This statistical evidence provides only a coarse assessment of the action, but it indicates that increasing San Joaquin River flows can explain observed increases in escapement. Historical data indicate that high San Joaquin River flows in the spring result in higher survival of outmigrating Chinook salmon smolts and greater adult returns 2.5 years later (Kjelson et al., 1981; Kjelson and Brandes, 1989), and that when the ratio between spring flows and exports increase, Chinook salmon production increases (CDFG, 2005; SJRGA, 2007). In its biological opinion, NMFS therefore concludes that San Joaquin River Basin and Calaveras River steelhead would likewise benefit under higher spring flows in the San Joaquin River in much the same way as fall-run Chinook do. NMFS recognizes this assumption is critical, and thus the biological opinion calls for implementation of a 6-year smolt-survival study (acoustic tags) (Action IV.2.2), using hatchery steelhead and fall Chinook.

The controversy lies in the effectiveness of the component of this action that reduces water exports from the delta. The effectiveness of reducing exports to improve steelhead smolt survival is less certain, in part because within the VAMP (Vernalis Adaptive Management Plan) increased flows and reduced exports are combined, and in part because steelhead smolts are larger and stronger swimmers than Chinook salmon smolts. Furthermore, it is not clear in the biological opinion how managing exports for this purpose would be integrated with export management for other actions. The choice of a 4:1 ratio of net flows to exports appears to be the result of coordinated discussions among the interested parties. Given the weak influence of exports in all survival relationships (Newman, 2008), continued negotiation offers opportunities to reduce water use in this specific action without great risk to salmon. Further analysis of VAMP data also offers an opportunity to help clarify the issue.

The committee concludes that the rationale for increasing San Joaquin River flows has a stronger foundation than the prescribed action of concurrently managing inflows and exports. We further conclude that the implementation of the 6-year steelhead smolt survival study (action IV.2.2) could provide useful insight as to the actual effectiveness of the proposed flow management actions as a long-term solution.

### **Increase Passage through Yolo Bypass**

This action would reduce migratory delays and loss of adult and juvenile salmon and green sturgeon at structures in the Yolo Bypass. For sturgeon there is substantial evidence that improved upstream passage at Yolo will be beneficial. For salmon, the purpose is to route salmon away from the interior delta and through a habitat that is favorable for growth. This action is scientifically justified and prudent, but its implications for the routing of flows through the system as a whole were not transparently evaluated. For example, moving water through the Yolo Bypass results in less water coming through the Sacramento River. Were the effects of less flow in the Sacramento River considered in the design of the action? Similarly, how were the possible negative consequences of increased flooding of the Yolo Bypass on mercury cycling considered? This exemplifies a general tendency throughout the discussion of the actions to focus on the biologically beneficial aspects but to not fully present how any conflicting consequences or potential for such consequences were considered.

### **Floodplain Habitat**

The floodplain habitat actions (Actions I.6.1-4) involve increasing the inundation of private and public lands within the Sacramento River basin to increase the amount and quality of rearing habitat for juvenile salmon. This action suite appears scientifically justified on the basis of a number of studies (e.g., Sommer et al., 2001; Whitener and Kennedy, 1999; Moyle et al., 2007). Given the strong basis, the committee recommends early implementation of these actions providing the implications for releases and routing of flows on other actions, and any potential negative consequences, e.g., mobilization of mercury, are adequately considered. In addition, the committee suggests detailed studies of the outcome of these actions to provide important data for improved life cycle models for these species.

### **INTEGRATION OF RPAs**

The RPAs lack a quantitative analytical framework that ties them together within species, between smelt and salmonid species, and across the watershed. This type of systematic, formalized analysis is necessary to provide an objective determination of the net effect of the actions on the listed species and on water users.

An additional overall, systematic, coordinated analysis of the effect of all actions taken together and a process for implementing the optimized, combined set of actions would help to establish the credibility of the effort overall. Instances of coordination certainly exist. For example, the analysis done by NMFS for the Action IV.2.1 (Appendix 5), is an example of coordination, where the water needs for the 4-to-1 flow-to-export ratio for steelhead were determined and used to refine the action. But coordination is not integration. The lack of a systematic, well framed overall analysis is a serious deficiency. The interagency effort to transparently reach consensus on implications of the combined RPAs for their effects on all the species and on water quality and quantity within the delta and on water operations and deliveries should use scientific principles and methods in a collaborative and integrative manner. Full documentation of deci-



sions is an essential part of such an effort, as is inclusion of the environmental water needs of specific actions and for the entire RPA.

It is clear that integrative tools that, for example, combine the effect over life stages into a population-level response would greatly help the development and evaluation of the combined actions. This was acknowledged by the FWS and NMFS, as well by many of the other presenters during the two days of public session of the committee meeting. There has been significant investment in operations and hydrodynamic models for the system, which have been invaluable for understanding and managing the system. An investment in ecological models that complement the operations and hydrodynamics models is sorely needed. This issue has been raised repeatedly in peer reviews, but still has not been incorporated in the NMFS and FWS analyses. Without a quantitative integration tool, the expected effects of individual actions on the listed species will remain a matter of judgment based on the interpretation of many disparate studies. The NMFS and FWS had to therefore determine the cumulative effects of the multiple actions in each RPA in a qualitative manner. This leads to arguments and disputes that are extremely difficult to resolve and that can undermine the credibility of the biological opinions. Commitment to a long-term effort to develop a quantitative tool (or tools) should be part of the RPA, with the explicit goal of formalizing and focusing the sources of disagreement and allowing for the clear testing of alternative arguments.

Transparent consideration of the implications of water requirements also would seem well advised because some of the actions have significant water requirements. DWR and NMFS used CalSim-II and Calite to simulate a collection of actions to determine water needs associated with the NMFS RPA, and concluded that they would amount to 5-7% of total water allocations (NMFS, 2009). (Because the actions involving negative OMR flows were similar in timing and magnitude in both the NMFS and the FWS RPAs, all OMR flow management was included in this estimate.) Those, and complementary efforts, should be extended to as many of the actions in combination as feasible, recognizing that the adaptive nature of many aspects of the RPAs, along with variations in environmental conditions and in water demands, limit the degree of certainty associated with such estimates. Credible documentation of the water needed to implement each action and the combined actions, would enable an even clearer and more logical formulation of how the suite of actions might be coordinated to simultaneously benefit the species and ensure water efficiency.

## **OTHER POSSIBLE RPAs**

The committee's charge included the task that the committee should identify, if possible, additional potential RPAs that would provide the potential to provide equal or greater protection to the fishes than the current RPAs while costing less in terms of water availability for other uses. The committee considered RPAs that had been considered and rejected by the agencies or that were recommended to the committee for its consideration (Hamilton 2010). They included using bubble-curtain technology instead of hard barriers to direct migration of salmon and steelhead smolts, use of weirs to protect wild steelhead from interbreeding and competition, use of weirs to reduce spring-run Chinook from inbreeding and competition with fall-run Chinook, habitat restoration and food-web enhancement, restoration of a more-natural hydrograph, reducing mortality caused by nonnative predators, reducing contaminants, reducing other sources of "take," imple-

mentation of actions to reduce adverse effects of hatcheries, and ferrying San Joaquin River steelhead smolts through the delta.

Some of these are already included to some degree in the RPAs (e.g., reduction of adverse hatchery effects, habitat restoration), and some might not be within the agencies' authorities as RPA actions under the ESA (e.g., contaminant reduction and reduction of other sources of "take"). The committee did not attempt to evaluate whether these suggestions represent good actions to help reduce risks to the listed species in a general attempt at restoration, as that will be addressed in the committee's second report. The committee concludes that none of the above suggested alternative RPAs has received sufficient documentation or evaluation to be confident at present that any of them would have the potential to provide equal or greater protection for the listed species while requiring less disruption of delta water diversions.

Several long-term actions described above have the potential to increase protections for the species while requiring the use of less water for that purpose, because they will result in a better understanding of the system. That better understanding should allow for a better matching of water for species needs, thus potentially reducing the amount of water used in less-effective actions. However, no short-term measure was identified that would provide equal protection to the fishes while reducing restrictions on water diversions.

### **RESOLVING INCOMPATIBILITIES BETWEEN THE RPAs**

The committee noted in its discussion of the Delta Cross Channel action for salmon that it has a small potential for conflict with the requirements for smelt, although the action itself includes a consideration of the effects on smelt. In addition, the agencies have coordinated, and in some cases changed, their actions to avoid or reduce such conflicts, including actions concerning the installation of a "non-physical" barrier at the Head of Old River and the possibility of constructing a barrier across Georgiana Slough (NMFS and FWS, 2010). However, as the committee has noted elsewhere, coordination is not integration, and while it commends the agencies for working together to avoid incompatibilities between the RPAs, it concludes that this coordination is not sufficient to achieve the best results or full evaluation of incompatibilities. To achieve those goals requires an integrated analysis, because without such an analysis it is difficult or impossible to properly evaluate potential conflicts among RPA actions. More important, such an analysis would help to produce more-effective actions. The lack of an integrated analysis also prevented the committee from a fuller evaluation of potential incompatibilities between the RPAs.

### **EXPECTATIONS AND PROXIMATE MEASURES**

The committee heard several times at the public sessions that the RPA actions for delta smelt are not working as there has been no response in the standard annual abundance indices during the last 3 years when action-related restrictions have been imposed. Such comments are appropriate, but only if realistic expectations are used to judge effectiveness. In this case, it is unrealistic to expect immediate and proportional responses to actions in annual indices of delta smelt, especially within the first few years of implementation. There are several reasons for this. First, fish abundances are influenced by many factors not affected by the actions. This is true in all

estuarine and marine systems, and is simply inherent in fish population dynamics. For example, in the case of the species here, three drought years coincided with the implementation of the actions. Other factors have also varied that would further mask any response in the annual indices.

Second, delta smelt populations are very small. The ability of the annual indices to show changes in response to actions is compromised due to the inherent lack of precision in sampling and constructing indices of abundance when populations are very small. Unlike salmon and steelhead, the adults of which can be counted with great precision as they migrate upstream, delta smelt are more difficult to count as well as being rare. While this is frustrating, little change in the annual indices over a few years neither invalidates the utility of the actions nor do they demonstrate that the actions are effective. Finally, there were no prior quantified estimates of response to calibrate expectations. Expectations would be better established if the RPA proposals more explicitly quantified the nature and the expected timescale of responses in the target species, and detailed exactly what would be done to assess the validity of those predictions.

### **RPA RECOMMENDATIONS**

The committee concluded that the uncertainties and disagreements surrounding some of the RPA actions could be reduced by some additional activities. In general, the committee recommends that, within the limits the agencies face with respect to human and financial resources, a more-integrated approach to analyzing adverse effects of water operations and potential actions to reduce those effects would be helpful. The approach would include a broader examination of the life cycles of each fish species and where possible, integrating analyses across species. Although there is much general evidence that the profound reduction and altered timing of the delta water supply has been part of the reason for the degradation of these species' habitats, the marginal benefits of beginning to reverse the damage will be difficult to recognize for some time and there is much uncertainty about how to design attempts at the reversal. At this time, the best that can be done is to design a strategy of pumping limitations that uses the best available monitoring data and the best methods of statistical analysis to design an exploratory approach that could include enhanced field measurements to manage the pumping limitations adaptively while minimizing impacts on water users. Such an approach would include a more explicit and transparent consideration of water requirements, despite the variability in environmental conditions and water demand; and population models to evaluate the combined effects of the individual actions.

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## Appendixes

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## Appendix A

### Committee on Sustainable Water and Environmental Management in the California Bay-Delta

#### STATEMENT OF TASK

At the request of Congress and the Departments of the Interior and Commerce, a committee of independent experts will be formed to review the scientific basis of actions that have been and could be taken to simultaneously achieve both an environmentally sustainable Bay-Delta and a reliable water supply. In order to balance the need to inform near-term decisions with the need for an integrated view of water and environmental management challenges over the longer-term, the committee will undertake two main projects over a term of two years resulting in two reports.

First, by approximately March 15, 2010, the committee will issue a report focusing on scientific questions, assumptions, and conclusions underlying water-management alternatives in the U.S. Fish and Wildlife Service's (FWS) Biological Opinion on Coordinated Operations of the Central Valley Project and State Water Project (Dec. 15, 2008) and the National Marine Fisheries Service's (NMFS) Biological Opinion on the Long-Term Central Valley Project and State Water Project Operations Criteria and Plan (June 4, 2009). This review will consider the following questions:

- Are there any "reasonable and prudent alternatives" (RPAs), including but not limited to alternatives considered but not adopted by FWS (e.g., potential entrainment index and the delta smelt behavioral model) and NMFS (e.g., bubble-curtain technology and engineering solutions to reduce diversion of emigrating juvenile salmonids to the interior and southern Delta instead of towards the sea), that, based on the best available scientific data and analysis, (1) would have lesser impacts to other water uses as compared to those adopted in the biological opinions, and (2) would provide equal or greater protection for the relevant fish species and their designated critical habitat given the uncertainties involved?
- Are there provisions in the FWS and NMFS biological opinions to resolve potential incompatibilities between the opinions with regard to actions that would benefit one listed species while causing negative impacts on another, including, but not limited to, prescriptions that: (1) provide spring flows in the Delta in dry years primarily to meet water quality and outflow objectives pursuant to Water Board Decision-1641 and conserve upstream storage for summertime cold water pool management for anadromous fish species; and (2) provide fall flows during wet years in the Delta to benefit Delta smelt, while also conserving carryover storage to benefit next year's winter-run cohort of salmon in the event that the next year is dry?
- To the extent that time permits, the committee would consider the effects of other stressors (e.g., pesticides, ammonia discharges, invasive species) on federally listed and other at-risk species in the Bay-Delta. Details of this task are the first item discussed as part of the committee's second report, below, and to the degree that they cannot be addressed in the first report they will be addressed in the second.

Second, in approximately November 2011, the committee will issue a second report on how to most effectively incorporate science and adaptive management concepts into holistic programs for management and restoration of the Bay-Delta. This advice, to the extent possible, should be coordinated in a way that best informs the Bay Delta Conservation Plan development process. The review will include tasks such as the following:

- Identify the factors that may be contributing to the decline of federally listed species, and as appropriate, other significant at-risk species in the Delta. To the extent practicable, rank the factors contributing to the decline of salmon, steelhead, delta smelt, and green sturgeon in order of their likely impact on the survival and recovery of the species, for the purpose of informing future conservation actions. This task would specifically seek to identify the effects of stressors other than those considered in the biological opinions and their RPAs (e.g., pesticides, ammonia discharges, invasive species) on federally listed and other at-risk species in the Delta, and their effects on baseline conditions. The committee would consider the extent to which addressing stressors other than water exports might result in lesser restrictions on water supply. The committee's review should include existing scientific information, such as that in the NMFS Southwest Fisheries Science Center's paper on decline of Central Valley fall-run Chinook salmon, and products developed through the Pelagic Organism Decline studies (including the National Center for Ecosystem Analysis and Synthesis reviews and analyses that are presently under way).
- Identify future water-supply and delivery options that reflect proper consideration of climate change and compatibility with objectives of maintaining a sustainable Bay-Delta ecosystem. To the extent that water flows through the Delta system contribute to ecosystem structure and functioning, explore flow options that would contribute to sustaining and restoring desired, attainable ecosystem attributes, while providing for urban, industrial, and agricultural uses of tributary, mainstem, and Delta waters, including for drinking water.
- Identify gaps in available scientific information and uncertainties that constrain an ability to identify the factors described above. This part of the activity should take into account the Draft Central Valley Salmon and Steelhead recovery plans (NOAA 2009b), particularly the scientific basis for identification of threats to the species, proposed recovery standards, and the actions identified to achieve recovery.
- Advise, based on scientific information and experience elsewhere, what degree of restoration of the Delta system is likely to be attainable, given adequate resources. Identify metrics that can be used by resource managers to measure progress toward restoration goals.

The specific details of the tasks to be addressed in this second report will likely be refined after consultation among the departments of the Interior and Commerce, Congress, and the National Research Council, considering stakeholder input, and with the goal of building on, rather than duplicating, efforts already being adequately undertaken by others.

## Appendix B

### Water Science and Technology Board

CLAIRE WELTY, *Chair*, University of Maryland, Baltimore County  
YU-PING CHIN, Ohio State University, Columbus  
OTTO C. DOERING, Purdue University, West Lafayette, Indiana  
JOAN G. EHRENFELD, Rutgers University, New Brunswick, New Jersey  
GERALD E. GALLOWAY, JR., University of Maryland, College Park  
CHARLES N. HAAS, Drexel University, Philadelphia, Pennsylvania  
KENNETH R. HERD, Southwest Florida Water Management District, Brooksville, Florida  
JAMES M. HUGHES, Emory University, Atlanta, Georgia  
KIMBERLY L. JONES, Howard University, Washington, DC  
MICHAEL J. MCGUIRE, Michael J. McGuire, Inc., Santa Monica, California  
G. TRACY MEHAN III, The Cadmus Group, Inc., Arlington, Virginia  
DAVID H. MOREAU, University of North Carolina, Chapel Hill  
DENNIS D. MURPHY, University of Nevada, Reno  
THOMAS D. O'ROURKE, Cornell University, Ithaca, New York  
DONALD I. SIEGEL, Syracuse University, Syracuse  
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ANITA A. HALL, Senior Program Associate  
MICHAEL J. STOEVEER, Research Associate  
STEPHEN T. RUSSELL, Senior Program Assistant

## Appendix C

### Ocean Studies Board

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ROBERT HALLBERG, National Oceanic and Atmospheric Administration Geophysical Fluid Dynamics Laboratory and Princeton University, New Jersey  
DEBRA HERNANDEZ, Southeast Coastal Ocean Observing Regional Association, Mt. Pleasant, South Carolina  
ROBERT A. HOLMAN, Oregon State University, Corvallis  
KIHO KIM, American University, Washington, DC  
BARBARA A. KNUTH, Cornell University, Ithaca, New York  
ROBERT A. LAWSON, Science Applications International Corporation, San Diego, California  
GEORGE I. MATSUMOTO, Monterey Bay Aquarium Research Institute, Moss Landing, California  
JAY S. PEARLMAN, The Boeing Company (ret.), Port Angeles, Washington  
ANDREW A. ROSENBERG, Science & Knowledge Conservation International, Arlington, Virginia  
DANIEL L. RUDNICK, Scripps Institution of Oceanography, La Jolla, California  
ROBERT J. SERAFIN, National Center for Atmospheric Research, Boulder, Colorado  
ANNE M. TRÉHU, Oregon State University, Corvallis  
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DAWN J. WRIGHT, Oregon State University, Corvallis  
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HEATHER CHIARELLO, Senior Program Assistant  
JEREMY JUSTICE, Senior Program Assistant



## **Appendix D**

### **Speakers at Committee's Meeting January 24-29, 2010 University of California, Davis**

Ara Azhderian, San Luis and Delta Mendota Water Authority  
Barbara Barrigan-Parilla, Restore the Delta  
Brett Baker, Delta Resident  
Letty Belin, U.S. Department of the Interior  
Cheryl Bly-Chester, UC Berkeley  
Dan Castleberry, U.S. Fish and Wildlife Service  
Jim Costa, U.S. House of Representatives, California-District 20  
DeeDee D'Adamo, Office of U.S. Representative Dennis Cardoza, California-District 18  
Cliff Dahm, CALFED (Delta Science Program)  
Stan Dean, Sacramento Regional County Sanitation District, Director of Policy  
Rick Deriso, Inter-American Tropical Tuna Commission  
Diana Engle, Larry Walker Associates  
Fred Feyrer, Bureau of Reclamation  
David Fullerton, Metropolitan Water District of Southern California  
Greg Gartrell, Contra Costa Water District  
Zeke Grader, Pacific Coast Federation of Fishermen's Association  
Cay Goude, U.S. Fish and Wildlife Service  
Scott Hamilton, Coalition for a Sustainable Delta  
Ann Hayden, Environmental Defense Fund  
Bruce Herbold, U.S. Environmental Protection Agency  
John Herrick, South Delta Water Agency  
Jerry Johns, California Department of Water Resources  
Harold Johnson, Pacific Legal Institute  
Linda Katehi, University of California, Davis  
Jason Larroba, Tehama-Colusa Canal Authority  
Tom Lindemuth, Delta Science Center, Big Break  
Steve Lindley, National Marine Fisheries Service  
Craig Manson, Council for Endangered Species Act Reliability  
BJ Miller, Consultant  
Ron Milligan, Bureau of Reclamation  
Jeffrey Mount, University of California, Davis  
Peter B. Moyle, University of California, Davis  
Steve Murawski, National Oceanic and Atmospheric Administration  
Eligio Nava, Central Valley Hispanic Chamber  
Dante John Nemellini, Central Delta Water Agency

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Matt Nobriga, California Department of Fish and Game  
Doug Obegi, Natural Resources Defense Council  
Tim O'Laughlin, O'Laughlin & Paris  
Bruce Oppenheim, National Marine Fisheries Service  
Richard Pool, Salmon fishing industry  
Maria Rea, National Marine Fisheries Service  
Rhonda Reed, National Marine Fisheries Service  
Mark Renz, Association of California Water Agencies  
Spreck Rosekrans, Environmental Defense Fund  
Melanie Rowland, NOAA-General Counsel  
Patricia Schuffon, Pacific Advocate Program  
Jeff Stuart, National Marine Fisheries Service  
Nicky Suard, Delta Land and Business owners  
Christina Swanson, The Bay Institute  
Robert Thornton, Nossaman  
Mike Urkov, Tehama-Colusa Canal Authority  
Jay Wells, North American Power Sweeping Association  
Carl Wilcox, California Department of Fish and Game  
Susan William, Pt. Lobos Marine Preserve  
Mary Winfree, PoE/USANG  
Phil Wyman, Former Central Valley Senator/Assemblyman  
Paula Yang, Hmong Sisterhood  
Garwin Yip, National Marine Fisheries Service

## Appendix E

### Biographical Sketches for Members of the Committee on Sustainable Water and Environmental Management in the California Bay-Delta

**ROBERT J. HUGGETT**, *Chair*, is an independent consultant and professor emeritus and former chair of the Department of Environmental Sciences, Virginia Institute of Marine Sciences at the College of William and Mary, where he was on the faculty for over 20 years. He also served as Professor of Zoology and Vice President for Research and Graduate Studies at Michigan State University from 1997 to 2004. Dr. Huggett is an expert in aquatic biogeochemistry and ecosystem management whose research involved the fate and effects of hazardous substances in aquatic systems. From 1994 to 1997, he was the Assistant Administrator for Research and Development for the U.S. Environmental Protection Agency, where his responsibilities included planning and directing the agency's research program. During his time at the EPA, he served as Vice Chair of the Committee on Environment and Natural Resources and Chair of the Subcommittee on toxic substances and solid wastes, both of the White House Office of Science and Technology Policy. Dr. Huggett founded the EPA Star Competitive Research Grants program and the EPA Star Graduate Fellowship program. He has served on the National Research Council's (NRC) Board on Environmental Studies and Toxicology, the Water Science and Technology Board, and numerous study committees on wide ranging topics. Dr. Huggett earned an M.S. in Marine Chemistry from the Scripps Institution of Oceanography at the University of California at San Diego and completed his Ph.D. in Marine Science at the College of William and Mary.

**JAMES J. ANDERSON** is a research professor the School of Aquatic and Fisheries Sciences at the University of Washington, where he has been teaching since 1983, and Co-Director of Columbia Basin Research. Prior to joining the faculty at the University of Washington, he did research work at the University of Kyoto in Japan, the National Institute of Oceanography in Indonesia, and Institute of Oceanographic Sciences in Wormley, UK. Dr. Anderson's research focuses on models of ecological and biological processes from a mechanistic perspective, specifically: (1) migration of organisms, (2) decision processes, and (3) mortality processes. For three decades he has studied the effects of hydrosystems and water resource allocations on salmon and other fish species. He has developed computer models of the migration of juvenile and adult salmon through hydrosystems and heads the DART website, an internet database serving real-time environmental and fisheries data on the Columbia River. His other research interests include mathematical studies in ecosystems, biodemography, toxicology and animal behavior. He has served on a number of regional and national panels and has testified numerous times before Congress on the impacts of hydrosystems on fisheries resources. He received his B.S. and Ph.D. in oceanography from the University of Washington.

**MICHAEL E. CAMPANA** is Professor of Geosciences at Oregon State University, former Director of its Institute for Water and Watersheds, and Emeritus Professor of Earth and Planetary Sciences at the University of New Mexico. Prior to joining OSU in 2006 he held the Albert J. and Mary Jane Black Chair of Hydrogeology and directed the Water Resources Program at the University of New Mexico and was a research hydrologist at the Desert Research Institute and taught in the University of Nevada-Reno's Hydrologic Sciences Program. He has supervised 70 graduate students. His research and interests include hydrophilanthropy, water resources management and policy, communications, transboundary water re-

sources, hydrogeology, and environmental fluid mechanics, and he has published on a variety of topics. Dr. Campana was a Fulbright Scholar to Belize and a Visiting Scientist at Research Institute for Groundwater (Egypt) and the IAEA in Vienna. Central America and the South Caucasus are the current foci of his international work. He has served on six NRC-NAS committees. Dr. Campana is founder, president, and treasurer of the Ann Campana Judge Foundation ([www.acjfoundation.org](http://www.acjfoundation.org)), a 501(c)(3) charitable foundation that funds and undertakes projects related to water, sanitation, and hygiene (WASH) in Central America. He operates the WaterWired blog and Twitter. He earned a BS in geology from the College of William and Mary and MS and PhD degrees in hydrology from the University of Arizona.

**THOMAS DUNNE** is a professor in the Donald Bren School of Environmental Science and Management at the University of California at Santa Barbara. He is a hydrologist and a geomorphologist, with research interests that include alluvial processes; field and theoretical studies of drainage basin and hillslope evolution; sediment transport and floodplain sedimentation; debris flows and sediment budgets of drainage basins. He served as a member of the WSTB Committee on Water Resources Research and Committee on Opportunities in the Hydrologic Sciences and was elected to the National Academy of Sciences in 1988. He has acted as a scientific advisor to the United Nations, the governments of Brazil, Taiwan, Kenya, Spain, the Philippines, Washington, Oregon, several U.S. federal agencies, and The Environmental Defense Fund. He is a recipient of the American Geophysical Union Horton Award. Dr. Dunne holds a B.A. from Cambridge University and a Ph.D. in geography from the Johns Hopkins University.

**ALBERT E. GIORGI** is president and senior fisheries scientist at BioAnalysts, Inc in Redmond, WA. He has been conducting research on Pacific Northwest salmonid resources since 1982. Prior to 1982, he was a research scientist with NOAA in Seattle, WA. He specializes in fish passage migratory behavior, juvenile salmon survival studies, biological effects of hydroelectric facilities and operation. His research includes the use of radio telemetry, acoustic tags, and PIT-tag technologies. In addition to his research, he acts as a technical analyst and advisor to public agencies and private parties. He regularly teams with structural and hydraulic engineers in the design and evaluation of fishways and fish bypass systems. He served on the NRC Committee on Water Resources Management, Instream Flows, and Salmon Survival in the Columbia River. He received his B.A. and M.A. in biology from Humboldt State University and his Ph.D. in fisheries from the University of Washington.

**PATRICIA M. GLIBERT** is a professor at the University of Maryland Center for Environmental Science, Horn Point Laboratory, where she has been on the faculty since 1986. Prior to UMD-HPL, she was a postdoctoral scholar and an assistant scientist at the Woods Hole Oceanographic Institution. Her research areas are in transformations and fate of inorganic and organic nitrogen in marine and estuarine systems; ecology of phytoplankton in coastal and oceanic environments; stable isotope techniques; eutrophication and its effects; growth and physiology of marine cyanobacteria and harmful algal bloom species; "top-down" control of nitrogen cycling; primary productivity and its regulation by environmental factors; and impacts of harmful algae on oysters. Her current projects are in the Chesapeake and coastal bays of Maryland, Florida Bay, and the Arabian Sea. She received her B.S. in biology from Skidmore College; M.S. in earth science from the University of New Hampshire; and her Ph.D. in organismal and evolutionary biology from Harvard University.

**CHRISTINE A. KLEIN** is the Chesterfield Smith Professor of Law at the University of Florida Levin College of Law, where she has been teaching since 2003. She offers courses on natural resources law, environmental law, water law, and property. Previously, she was a member of the faculty of Michigan State University College of Law, where she served as Environmental Law Program Director. From 1989 to 1993, she was an assistant attorney general in the Office of Colorado Attorney General, Natural Resources Section, where she specialized in water rights litigation. She has published widely on a variety of

water law and natural resources law topics. She holds a B.A. from Middlebury College, Vermont; a J.D. from the University of Colorado School of Law; and an LL.M. from Columbia University School of Law, New York.

**SAMUEL N. LUOMA** is a research professor at the John Muir Institute of the Environment, University of California, Davis and an emeritus Senior Research Hydrologist in the Water Resources Division of the U.S. Geological Survey, where he worked for 34 years. He also holds an appointment as a Scientific Associate at The Natural History Museum, London. Dr. Luoma's research centers on processes that control the fate, bioavailability and effects of contaminants, particularly in the San Francisco Bay-Delta. He served as the first lead on the CALFED Bay-delta program and is the Editor-in-Chief of San Francisco Estuary & Watershed Science. He has helped refine approaches to determine the toxicity of marine and estuarine sediments and developed models that are used in development of water quality standards. His most recent research interests are in environmental implications of nanotechnology and better connecting water science to water policy. He has served multiple times on the EPA's Science Advisory Board Subcommittee on Sediment Quality Criteria and on other NRC committees. Dr. Luoma received his B.S. and M.S. in Zoology from Montana State University, Bozeman, and his Ph.D. in Marine Biology from the University of Hawaii, Honolulu.

**MICHAEL J. MCGUIRE** is president and founder of Michael J. McGuire, Inc., in Santa Monica, California. He has provided consulting services over the past 18 years to public water utilities and industries in the areas of Safe Drinking Water Act compliance, source water quality protection and water treatment optimization. Prior to his consulting assignments, he was director of water quality and assistant general manager of the Metropolitan Water District of Southern California. His research interests include control of trace contaminants in drinking water; compliance with the Safe Drinking Water Act and all related regulations; occurrence, chemistry, and control of disinfection by-products; and identification and control of tastes and odors in water supplies. He is currently a member of the Water Science and Technology Board of the National Research Council and was selected as a member of the National Academy of Engineering in 2009. Dr. McGuire received his B.S. in civil engineering from the University of Pennsylvania and M.S. and Ph.D. in environmental engineering from Drexel University in Philadelphia.

**THOMAS MILLER** is professor of fisheries at the Chesapeake Biological Laboratory, University of Maryland Center for Environmental Science, where he has been teaching since 1994. Prior to UMCES-CBL, he was a postdoctoral fellow at McGill University, Montreal, Canada, and research specialist with the Center for Great Lakes Studies, University of Wisconsin, Milwaukee. His research focuses on population dynamics of aquatic animals, particularly in understanding recruitment, feeding and bio-physical interactions and early life history of fish and crustaceans. He has been involved in the development of a Chesapeake Bay fishery ecosystem plan, which includes detailed background information on fisheries, foodwebs, habitats and monitoring required to develop multispecies stock assessments. Most recently, he has developed an interest in the sub-lethal effects of contamination on Chesapeake Bay living resources using population dynamic approaches. He received his B.Sc. (hons) in human and environmental biology from the University of York, UK; his M.S. in ecology and Ph.D. in zoology and oceanography from North Carolina State University.

**JAYANTHA OBEYSEKERA** directs the Hydrologic & Environmental Systems Modeling Department at the South Florida Water Management District, where he is a lead member of a modeling team dealing with development and applications of computer simulation models for Kissimmee River restoration and the restoration of the Everglades Ecosystem. Prior to joining the South Florida Water Management District, he taught courses in hydrology and water resources at Colorado State University, Fort Collins; George Washington University, Washington, DC; and at Florida Atlantic University, Boca Raton, Florida. Dr. Obeysekera has published numerous research articles in refereed journals in the field of water resources. Dr. Obeysekera has over 20 years of experience practicing water resources engineering with an

emphasis on both stochastic and deterministic modeling. He has taught short courses on modeling in the Dominican Republic, Colombia, Spain, Sri Lanka, and the U.S. He was a member of the Surface Runoff Committee of the American Geophysical Union and is currently serving as a member of a Federal Task Group on Hydrologic Modeling. He served as member of NRC's Committee on Further Studies of Endangered and Threatened Fishes in the Klamath River. Dr. Obeysekera has a B.S. degree in civil engineering from University of Sri Lanka; M.E. in hydrology from University of Roorkee, India; and Ph.D. in civil engineering with specialization in water resources from Colorado State University.

**MAX J. PFEFFER** is International Professor of Development Sociology and Chair of the Department at Cornell University. His teaching concentrates on environmental sociology and sociological theory. His research spans several areas including farm labor, rural labor markets, international migration, land use, and environmental planning. The empirical work covers a variety of rural and urban communities, including rural/urban fringe areas. Research sites include rural New York and Central America. He has been awarded competitive grants from the National Institutes of Health, the National Science Foundation, the U.S. Environmental Protection Agency, the U.S. Department of Agriculture's National Research Initiative and its Fund for Rural America, and the Social Science Research Council. Dr. Pfeffer has published a wide range of scholarly articles and has written or co-edited four books. He recently published (with John Schelhas) *Saving Forests, Protecting People? Environmental Conservation in Central America*. He also previously served as the Associate Director of both the Cornell University Agricultural Experiment Station and the Cornell University Center for the Environment. Dr. Pfeffer has served on other NRC committees studying aspects of watershed management. He received his Ph.D. degree in sociology from the University of Wisconsin, Madison.

**DENISE J. REED** is a University Research Professor at the University of New Orleans and is currently Interim Director of the Ponchartrain Institute for Environmental sciences. Her research interests include coastal marsh response to sea-level rise and how this is affected by human activities. She has worked on coastal issues on the Atlantic, Pacific, and Gulf coasts of the United States, as well as other parts of the world, and has published the results in numerous papers and reports. She is involved in ecosystem restoration planning both in Louisiana and in California. Dr. Reed has served on numerous boards and panels concerning the effects of human alterations on coastal environments and the role of science in guiding ecosystem restoration, including the Chief of Engineers Advisory Board, a number of NRC committees, and the Ecosystem Sciences and Management Working Group of the NOAA Science Advisory Board. She received her B.A. and Ph.D. degrees in geography from the University of Cambridge, United Kingdom.

**KENNETH A. ROSE** is E.L. Abraham Distinguished Professor in Louisiana Environmental Studies at the Department of Oceanography and Coastal Sciences, Louisiana State University in Baton Rouge. Prior to joining the faculty at LSU in 1998 he was a scientist at Oak Ridge National Laboratory from 1987 to 1998. He also consulted with Martin Marietta Environmental Systems from 1983 to 1987. His research interests include mathematical and simulation models to better understand and forecast the effects of natural and anthropogenic factors on aquatic populations, community food webs, and ecosystems; and use of models in resource management and risk assessment. He is a fellow of the American Association for the Advancement of Science and editor of the *Canadian Journal of Fisheries and Aquatic Sciences*, *Marine and Coastal Fisheries*, and *San Francisco Estuary and Watershed Science*. He received his B.S. from the State University of New York at Albany and his M.S. and Ph.D. in fisheries from the University of Washington.

**DESIREE D. TULLOS** is assistant professor in the Department of Biological and Ecological Engineering, Oregon State University, Corvallis. Dr. Tullus consulted with Blue Land Water Infrastructure and with Barge, Waggoner, Sumner, and Cannon before joining the faculty at Oregon State University. Her

research areas include ecohydraulics, river morphology and restoration, bioassessment, and habitat and hydraulic modeling. She has done work on investigations of biological responses to restoration and engineered applications in riverine ecosystems; development and evaluation of targeted and appropriate bio-indicators for the assessment of engineered designs in riverine systems; assessing effects of urban and agricultural activities and management practices on aquatic ecosystem stability in developing countries. She received her B.S. in civil engineering from the University of Tennessee, Knoxville, and her M.C.E. in civil engineering and Ph.D. in biological engineering from North Carolina State University, Raleigh.

**From:** Tom Birmingham  
**Sent:** Friday, July 15, 2016 4:37 PM  
**To:** 'Bernhardt, David L.'  
**CC:** 'Jeff Sutton'  
**Subject:** FW: Question for the Record and Response

David,

Mr. LaMalfa is going to ask the question for the record. Please provide any edits to the first paragraph of the letter or other edits you might have directly to Jeff Sutton.

Thank you,  
Tom

---

**From:** Jeff Sutton [mailto:jsutton@tccanal.com]  
**Sent:** Friday, July 15, 2016 3:24 PM  
**To:** 'Tom Birmingham' <tbirmingham@westlandswater.org>  
**Cc:** 'Akroyd, Rebecca' <RAkroyd@kmtg.com>  
**Subject:** RE: Question for the Record and Response

Tom and Rebecca,

Just received confirmation from LaMalfa that he would very much like the opportunity to clear up the record on these points, and as such will be posing this question to me to provide follow up testimony.

The Congressman and Eastman are both very appreciate of the efforts, as am I.

Thanks again,

Jeffrey P. Sutton  
General Manager  
Tehama-Colusa Canal Authority  
P.O. Box 1025  
Willows, CA 95988  
Phone: (530) 934-2125  
Cell: (530) [REDACTED]-[REDACTED]

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Friday, July 15, 2016 9:55 AM  
**To:** 'Jeff Sutton'  
**Cc:** 'Akroyd, Rebecca'  
**Subject:** RE: Question for the Record and Response

Jeff,

The quote from Huffman was transcribed from the video of the hearing. I checked it twice to ensure its accuracy.

Tom



---

**From:** Akroyd, Rebecca [<mailto:RAkroyd@kmtg.com>]  
**Sent:** Friday, July 15, 2016 9:47 AM  
**To:** 'Jeff Sutton' <[jsutton@tccanal.com](mailto:jsutton@tccanal.com)>  
**Cc:** Tom Birmingham <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>  
**Subject:** RE: Question for the Record and Response

Jeff,

My redline edits to the draft letter are attached. A clean version of the letter is also attached. In addition, I have attached a final copy of the NAS Report – the page numbers are slightly different from those in the version previously shared.

I was able to cite-check the quotations from the NAS Report, its press release, and the various court decisions. I didn't have access to a transcript of Mr. Huffman's remarks, so wasn't able to check that paragraph.

Thanks  
Rebecca



**Rebecca R. Akroyd**

---

**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
**Sent:** Thursday, July 14, 2016 6:50 PM  
**To:** 'Jeff Sutton'  
**Cc:** 'Weaver, Kiel'; 'Bernhardt, David L.'; Akroyd, Rebecca  
**Subject:** Question for the Record and Response

Jeff,

Attached is a draft question that could be posed to you by Mr. LaMalfa and a draft reply. By copying Rebecca Akroyd on this email, I am requesting that she cite check the letter to ensure the letter accurately quotes the NAS report and the biological opinion judicial decisions. She will forward corrections directly to you.

Thank you to agreeing to handle this matter. I hope the documents are helpful.

Tom

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**Sent:** Friday, July 15, 2016 4:49 PM  
**To:** Tom Birmingham  
**CC:** Jeff Sutton  
**Subject:** Re: Question for the Record and Response

Ok. I will send them to Jeff.

On Jul 15, 2016, at 7:37 PM, Tom Birmingham <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)> wrote:

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**<image001.png> Rebecca R. Akroyd**

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or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

**From:** Cannon Michael

**Sent:** Friday, July 15, 2016 8:52 PM

**To:** John Fisher; Loren Booth; Tom Barcellos; James L. Nickel; Shawn Coburn; Georgeanne White; Daniel Errotabere; Paul Adams; Paul Parreira; Sarah Clark Woolf; Matt Fisher; Doug Philips; Kent Stephens; Bill Degroot; Johnny Roeloffs; Edwin Camp; Todd Neves; Jim Costa; Jim O'Banion; Mike Stearns; Kimberly Brown; Erik Hansen; Mark M. Borba; Derek Borba; William Bourdeau; Bill Phillimore

**CC:** Dave Puglia; Melissa Poole; David Longly Bernhardt; Steve Chedester; Martin McIntyre; Gayle Holman; Bill Luce; Johnny Amaral; Dan Vink; David Orth; Dennis Nuxoll; Brent Walthall; George H. Soares; Chris White; Mike Wade; Louie A Brown; Ara Azhderian; Dan Keppen; Dennis A. Cardoza; Nancy E Williams; Chase Hurley; Joel Nelsen; Roger A. Isom; Dominic DiMare; Jason R. Phillips; Joe Raeder; Tom Birmingham; Jennifer T. Buckman; Aubrey J D Bettencourt

**Subject:** Important - PLEASE READ

Quick update -

The letter is being drafted and will be available for review at the meeting on Monday - it will be emailed out for all those who cannot attend in person. The content will be broad enough that everyone should be able to sign it without issue.

In anticipation of having a letter that you will be comfortable signing, I would ask that you **please send me a scanned copy of your signature on white paper - in the email please let me know title and affiliation(company/district/etc.)** you would like on the letter - we should put either the district you are in or the town so that it is clear that there is broad support. I will not use any of the signatures until your approval after reviewing the letter. I just want to start the collection process now if possible. If you plan on attending on Monday, you can provide a signature at that time.

Timing is critical. We need to review the letter, gather signatures and distribute the letter by the end of next week - that is the goal.

I ask that you engage any contacts you can think of that could sign the letter, from other farmers to electeds, to business owners, etc. The more the better.

Please contact me via cell or email if you have any questions or concerns. I look forward to the meeting on Monday. Have a nice weekend.

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[www.bfarm.com](http://www.bfarm.com)  
[@agleader](mailto:@agleader)

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=====

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I realize that many are busy right now, but there are some decisions being made regarding supply and the timing is right to highlight how bad the situation is and the long term implications to these operations.

Some slight additional releases from Shasta could take a lot of pressure off the situation we face and the reservoir has 3.8 million acre feet. San Luis Reservoir is quickly heading to dead pool on the Fed side and this creates big issues for going in to 2017.

We need to speak up now. Please join in person or via the phone. There can't be a bigger than this for all of us.

Sincerely,

Cannon Michael  
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209-████  
[www.bfarm.com](http://www.bfarm.com)  
[@agleader](mailto:@agleader)

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Allied Grower friends and advisors,

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The time is right for us to get back together and show a unified front. There is quite a bit of tension right now south of the Delta, but we have to find ways to work together. If we fracture now it will be much harder for our legislators and industry representatives to support us - we have to keep a united front on the larger issues.

Our water system has been completely hijacked and if we don't find a way to do something, there will be a huge loss of agriculture in our areas and incredible damage to our communities. We have to push for some sort of meaningful change and action or the next decade will be a disaster. With the current Delta operations, cold water management and subsequent SGMA implementation, we are facing a very dire situation.

To start with we are going to get a letter drafted that we should be able to get broad support for. The draft will be available for your review in the next few days and I will circulate it for comment.

I also propose that we get together for a meeting in Fresno as soon as possible. I suggest **Tuesday the 19th at 2 p.m. in Fresno at the offices of the California Cotton Ginners and Growers at 1785 N. Fine Avenue.** There will be a call in number as well that I will provide shortly. If for some reason this date/time is unworkable, let me know.

The purpose of the meeting will be to discuss the letter as well as brainstorm and additional ideas of possible actions. A letter may not be enough. I know everyone is busy, but I hope you can make an effort to attend - this issue is critical and we need to work quickly.

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acre feet in storage. Don't let the short term strains derail an effort to work together.

I look forward to hearing your ideas and working with you.

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=====



**From:** Derek Borba

**Sent:** Friday, July 15, 2016 9:16 PM

**To:** Cannon Michael

**CC:** John Fisher; Loren Booth; Tom Barcellos; James L. Nickel; Shawn Coburn; Georgeanne White; Daniel Errotabere; Paul Adams; Paul Parreira; Sarah Clark Woolf; Matt Fisher; Doug Philips; Kent Stephens; Bill Degroot; Johnny Roeloffs; Edwin Camp; Todd Neves; Jim Costa; Jim O'Banion; Mike Stearns; Kimberly Brown; Erik Hansen; Mark M. Borba; William Bourdeau; Bill Phillimore; Dave Puglia; Melissa Poole; David Longly Bernhardt; Steve Chedester; Martin McIntyre; Gayle Holman; Bill Luce; Johnny Amaral; Dan Vink; David Orth; Dennis Nuxoll; Brent Walthall; George H. Soares; Chris White; Mike Wade; Louie A Brown; Ara Azhderian; Dan Keppen; Dennis A. Cardoza; Nancy E Williams; Chase Hurley; Joel Nelsen; Roger A. Isom; Dominic DiMare; Jason R. Phillips; Joe Raeder; Tom Birmingham; Jennifer T. Buckman; Aubrey J D Bettencourt

**Subject:** Re: Important - PLEASE READ

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A picture is worth a thousand words.

Derek

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**From:** William Bourdeau

**Sent:** Friday, July 15, 2016 9:17 PM

**To:** Derek Borba

**CC:** Cannon Michael; John Fisher; Loren Booth; Tom Barcellos; James L. Nickel; Shawn Coburn; Georgeanne White; Daniel Errotabere; Paul Adams; Paul Parreira; Sarah Clark Woolf; Matt Fisher; Doug Philips; Kent Stephens; Bill Degroot; Johnny Roeloffs; Edwin Camp; Todd Neves; Jim Costa; Jim O'Banion; Mike Stearns; Kimberly Brown; Erik Hansen; Mark M. Borba; William Bourdeau; Bill Phillimore; Dave Puglia; Melissa Poole; David Longly Bernhardt; Steve Chedester; Martin McIntyre; Gayle Holman; Bill Luce; Johnny Amaral; Dan Vink; David Orth; Dennis Nuxoll; Brent Walthall; George H. Soares; Chris White; Mike Wade; Louie A Brown; Ara Azhderian; Dan Keppen; Dennis A. Cardoza; Nancy E Williams; Chase Hurley; Joel Nelsen; Roger A. Isom; Dominic DiMare; Jason R. Phillips; Joe Raeder; Tom Birmingham; Jennifer T. Buckman; Aubrey J D Bettencourt

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Good idea.

Sent from my iPhone

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> Sincerely,

>

> Cannon Michael

> Bowles Farming Company

> 209-████-████ <tel:209-████-████> (Direct)

> www.bfarm.com<<http://www.bfarm.com>>

> @agleader<<https://twitter.com/agleader>>

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**From:** Cannon Michael

**Sent:** Friday, July 15, 2016 9:58 PM

**To:** Derek Borba

**CC:** John Fisher; Loren Booth; Tom Barcellos; James L. Nickel; Shawn Coburn; Georgeanne White; Daniel Errotabere; Paul Adams; Paul Parreira; Sarah Clark Woolf; Matt Fisher; Doug Philips; Kent Stephens; Bill Degroot; Johnny Roeloffs; Edwin Camp; Todd Neves; Jim Costa; Jim O'Banion; Mike Stearns; Kimberly Brown; Erik Hansen; Mark M. Borba; William Bourdeau; Bill Phillimore; Dave Puglia; Melissa Poole; David Longly Bernhardt; Steve Chedester; Martin McIntyre; Gayle Holman; Bill Luce; Johnny Amaral; Dan Vink; David Orth; Dennis Nuxoll; Brent Walthall; George H. Soares; Chris White; Mike Wade; Louie A Brown; Ara Azhderian; Dan Keppen; Dennis A. Cardoza; Nancy E Williams; Chase Hurley; Joel Nelsen; Roger A. Isom; Dominic DiMare; Jason R. Phillips; Joe Raeder; Tom Birmingham; Jennifer T. Buckman; Aubrey J D Bettencourt

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[209-255-1234](tel:209-255-1234) <tel:209-255-1234>  
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**Sent:** Sunday, July 17, 2016 7:09 AM

**To:** Cannon Michael

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**Subject:** RE: Important - PLEASE READ

**Attachments:** SpawningTemperaturesCCR.png; DeltaDiagnostics.png; RegulatorySchema.pdf; Allocation-Outflow (071616).pdf; 2015-2016.png

Attached are a few ideas. None are necessarily submissions for the letter, rather examples of what is possible/available. I am not a water or fish expert so I would appreciate some direction and welcome any ideas.

**Attachments:**

**SpawningTemperaturesCCR.png**

The Sacramento Bee ran a few articles implying that water temperature in the Sacramento River were the key driver in successful juvenile chinook migration. Some articles included bar charts that showed their decline in migration over time while others showed partial temperature records. I wanted to see what it looked like when both temperature and migration records were viewed on the same graph. In 2010, 2011, and 2012, temperatures were more than ideal while migration levels were depressed. On the contrary, temperature levels were high in 2009 with a huge successful migration (4.5M). The point? Temperatures are not the only factor impacting salmon.

<http://www.sacbee.com/news/state/california/water-and-drought/article41684160.html>

<http://www.sacbee.com/news/state/california/water-and-drought/article83145097.html>

**DeltaDiagnostics.png**

There are multiple graphs that relate to Delta outflow, Banks (SWP) & Jones (CVP) pumping, X2 Salinity barrier, Old & Middle River flows (daily, 5-day, and 14-day moving average. The bold red line is the threshold set by the Smelt Working Group), SJR flow at Vernalis, cumulative outflow and pumping, and capacity in San Luis Reservoir. The idea was to stack the graphs vertically to track which regulatory constraints were in play. The stacked cumulative outflow and pumping graph in the top-right corner has a dashed-red line over it that represents the combined pumping capacity that was utilized each day, calculated as  $(SWP + CVP \text{ pumping}) / (SWP + CVP \text{ capacities})$

**Regulatory Schema.pdf**

The bottom graph aims to show which regulatory constraints were in play and when. It will ultimately supplement the Delta Diagnostics graphic above. Unfortunately, the regulatory mandates listed here are not an exhaustive list. I am working with the USBR to acquire the official data. The charts above are merely placeholders...I believe they are data for OMR, Banks, Jones, and SJR @ Vernalis.

**Allocation-Outflow(071616).pdf**

Water allocations for North and South contractors are assembled for the period ranging from 1998-2016 and compared to Delta Outflow. The presentation is a little convoluted because it uses allocation percentages to show relative changes, **and not acre-feet**. For example, Northern contractors in 1998 each received 100% allocation, so the relative areas for each are exactly the same. Reductions in allocation get reflected as a shrinking percentage of their respective areas. While it is not a good graphic to decipher quantities delivered, it does show which contractors are curtailed and when...which makes it easy to compare years like 2007, 2008, 2009, and 2010 to 2016 and ask why allocations were given to SoD contractors when Delta outflow was less than the other years?

## 2015-2016.png

This is a remake of the graphic Erick Johnson sends out and is built using official Dayflow data. The background map was pulled from LandSat8. The pie-chart in the upper left corner shows outflow, pumping, and in-delta consumption as a proportion of inflow. Ex: Outflow/Inflow = 81.2%...which means from 10/1/15 to 7/12/16, 81% of the water that entered the Delta went straight to the ocean. The small pie-chart is the daily outflow, pumping, and in-delta consumption as a proportion of inflow.

Also, Forrest Melton at Ames Research does great work comparing fallow lands in California from year-to-year. He's a great guy. We worked with him in 2013 and he would be a valuable resource to have for corroborating impacts of questionable water policy.

He compares years 2011, 2013, and 2014 in this presentation: [melton\\_swrr\\_20Nov2014.pdf](#)

Not sure if I did a good job of explaining any of these graphics so feel free to ask questions, make suggestions, or offer other ideas.

Thanks,

Derek

**From:** Cannon Michael [mailto:cannon@bfarm.com]

**Sent:** Friday, July 15, 2016 9:58 PM

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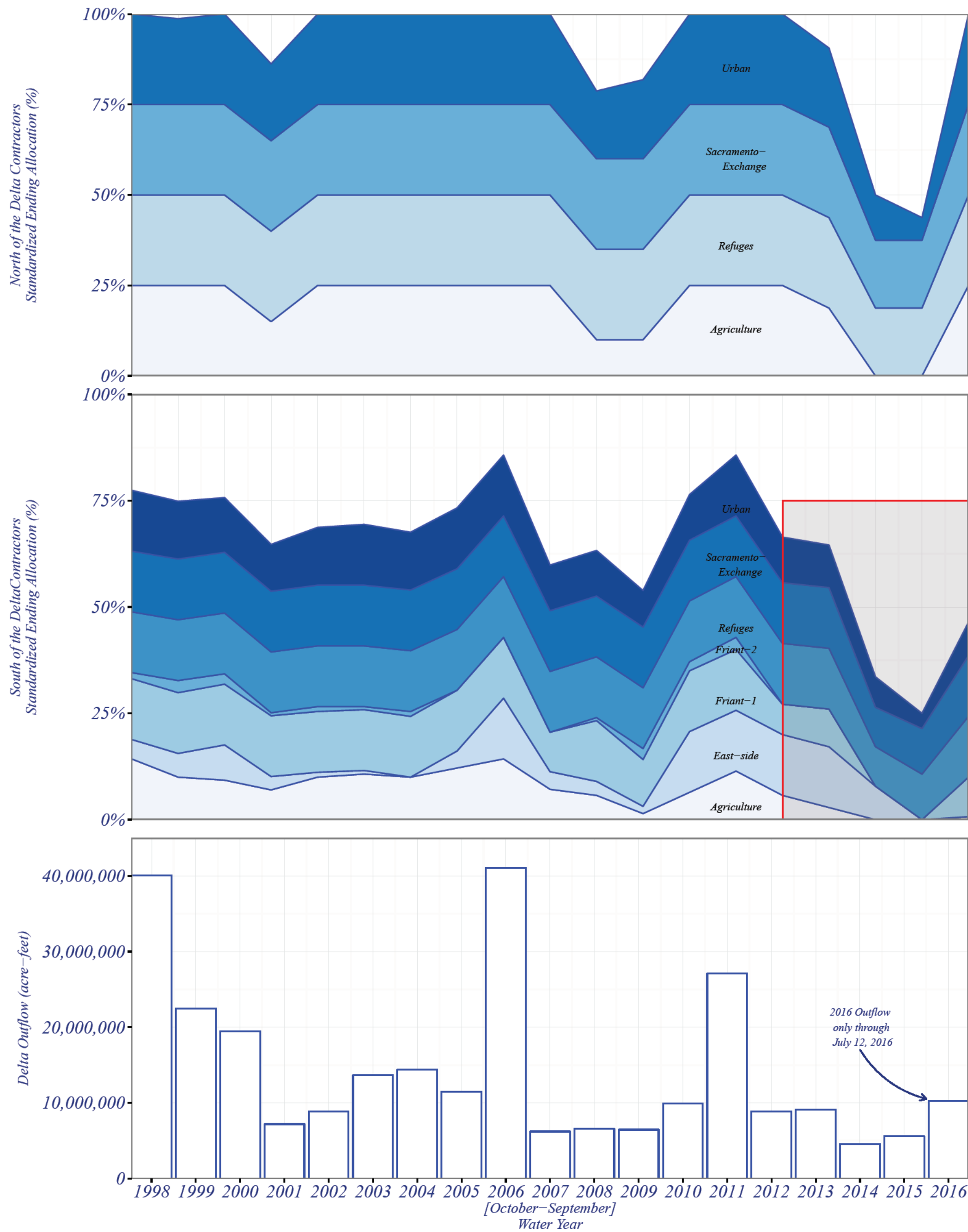
=====





# Water Allocations & Delta Outflow

Annual water allocations for North and South-of-the-Delta contractors from 1998–2016



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**Sent:** Sunday, July 17, 2016 4:06 PM

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While the letter will be one approach, we need to brainstorm on other ways to bring attention to the issue. Everything should be on the table and no idea is bad idea.

It struck me today that some sort of march or rally at San Luis Reservoir could be a way to bring attention - Shasta almost full and San Luis running to dead-pool. Drive tractors up 152 to the reservoir overlook? Buses and marchers?

I know all of our farms are really busy right now, but maybe it would be worth it to try and pull something together. The letter is a start, but maybe we need some other action that would get more attention.

I hope ideas are put on the table at the meeting tomorrow. We need to do more than just our usual approach.

Take care and talk to you tomorrow.

Sincerely,

Cannon Michael  
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Our water system has been completely hijacked and if we don't find a way to do something, there will be a huge loss of agriculture in our areas and incredible damage to our communities. We have to push for some sort of meaningful change and action or the next decade will be a disaster. With the current Delta operations, cold water management and subsequent SGMA implementation, we are facing a very dire situation.

To start with we are going to get a letter drafted that we should be able to get broad support for. The draft will be available for your review in the next few days and I will circulate it for comment.

I also propose that we get together for a meeting in Fresno as soon as possible. I suggest **Tuesday the 19th at 2 p.m. in Fresno at the offices of the California Cotton Ginners and Growers at 1785 N. Fine Avenue.** There will be a call in number as well that I will provide shortly. If for some reason this date/time is unworkable, let me know.

The purpose of the meeting will be to discuss the letter as well as brainstorm and additional ideas of possible actions. A letter may not be enough. I know everyone is busy, but I hope you can make an effort to attend - this issue is critical and we need to work quickly.

Our enemies want nothing more than for us to spend our time, money and energy to fight each other. I know each area has to take steps to protect itself, but there are huge issues out there that we can all unite to try and fix. The environmentalists want nothing more than to watch us fight over the scraps of water instead of going after the issues that are keeping millions of acre feet in storage. Don't let the short term strains derail an effort to work together.

I look forward to hearing your ideas and working with you.

Sincerely,

Cannon Michael  
Bowles Farming Company  
[209-222-2222](tel:209-222-2222) (Direct)  
[www.bfarm.com](http://www.bfarm.com)  
[@agleader](mailto:michael@agleader.com)

**Please consider the Environment before printing this email.**

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=====

**From:** William Bourdeau

**Sent:** Sunday, July 17, 2016 5:05 PM

**To:** Cannon Michael

**CC:** John Fisher; Loren Booth; Tom Barcellos; James L. Nickel; Shawn Coburn; Georgeanne White; Daniel Errotabere; Paul Adams; Paul Parreira; Sarah Clark Woolf; Matt Fisher; Doug Philips; Kent Stephens; Bill Degroot; Johnny Roeloffs; Edwin Camp; Todd Neves; Jim Costa; Jim O'Banion; Mike Stearns; Kimberly Brown; Erik Hansen; Mark M. Borba; Derek Borba; William Bourdeau; Bill Phillimore; Jon Reiter; Dave Puglia; Melissa Poole; David Longly Bernhardt; Steve Chedester; Martin McIntyre; Gayle Holman; Bill Luce; Johnny Amaral; Dan Vink; David Orth; Dennis Nuxoll; Brent Walthall; George H. Soares; Chris White; Mike Wade; Louie A Brown; Ara Azhderian; Dan Keppen; Dennis A. Cardoza; Nancy E Williams; Chase Hurley; Joel Nelsen; Roger A. Isom; Dominic DiMare; Jason R. Phillips; Joe Raeder; Tom Birmingham; Jennifer T. Buckman; Aubrey J D Bettencourt

**Subject:** Re: Important - PLEASE READ

Count me it!

Sent from my iPhone

On Jul 17, 2016, at 7:06 PM, Cannon Michael <[cannon@bfarm.com](mailto:cannon@bfarm.com)> wrote:

While the letter will be one approach, we need to brainstorm on other ways to bring attention to the issue. Everything should be on the table and no idea is bad idea.

It struck me today that some sort of march or rally at San Luis Reservoir could be a way to bring attention - Shasta almost full and San Luis running to dead-pool. Drive tractors up 152 to the reservoir overlook? Buses and marchers?

I know all of our farms are really busy right now, but maybe it would be worth it to try and pull something together. The letter is a start, but maybe we need some other action that would get more attention.

I hope ideas are put on the table at the meeting tomorrow. We need to do more than just our usual approach.

Take care and talk to you tomorrow.

Sincerely,

Cannon Michael  
Bowles Farming Company  
209-■■■■-■■■■ (Direct)  
[www.bfarm.com](http://www.bfarm.com)  
[@agleader](mailto:@agleader)

Please consider the Environment before printing this email.

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On Fri, Jul 15, 2016 at 8:52 PM, Cannon Michael <[cannon@bfarm.com](mailto:cannon@bfarm.com)> wrote:

Quick update -

The letter is being drafted and will be available for review at the meeting on Monday - it will be emailed out for all those who cannot attend in person. The content will be broad enough that everyone should be able to sign it without issue.

In anticipation of having a letter that you will be comfortable signing, I would ask that you **please send me a scanned copy of your signature on white paper - in the email please let me know title and affiliation(company/district/etc.)** you would like on the letter - we should put either the district you are in or the town so that it is clear that there is broad support. I will not use any of the signatures until your approval after reviewing the letter. I just want to start the collection process now if possible. If you plan on attending on Monday, you can provide a signature at that time.

Timing is critical. We need to review the letter, gather signatures and distribute the letter by the end of next week - that is the goal.



I ask that you engage any contacts you can think of that could sign the letter, from other farmers to electeds, to business owners, etc. The more the better.

Please contact me via cell or email if you have any questions or concerns. I look forward to the meeting on Monday. Have a nice weekend.

Sincerely,

Cannon Michael  
Bowles Farming Company  
[209-252-1234](tel:209-252-1234) (Direct)  
[www.bfarm.com](http://www.bfarm.com)  
[@agleader](mailto:@agleader)

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=====

On Fri, Jul 15, 2016 at 6:49 AM, Cannon Michael <[cannon@bfarm.com](mailto:cannon@bfarm.com)> wrote:

I have gotten some feedback on the timing of the meeting and I think it best to move to Monday at 3 p.m. - I will send calendar invite and phone call in number shortly.

I realize that many are busy right now, but there are some decisions being made regarding supply and the timing is right to highlight how bad the situation is and the long term implications to these operations.

Some slight additional releases from Shasta could take a lot of pressure off the situation we face and the reservoir has 3.8 million acre feet. San Luis Reservoir is quickly heading to dead pool on the Fed side and this creates big issues for going in to 2017.

We need to speak up now. Please join in person or via the phone. There can't be a bigger than this for all of us.

Sincerely,

Cannon Michael

Bowles Farming Company, Inc.

209-████-████  
[www.bfarm.com](http://www.bfarm.com)  
@agleader

On Thu, Jul 14, 2016 at 6:20 PM -0700, "Cannon Michael" <[cannon@bfarm.com](mailto:cannon@bfarm.com)> wrote:

Allied Grower friends and advisors,

It has been awhile, so I hope you all are rested and ready to go.

The time is right for us to get back together and show a unified front. There is quite a bit of tension right now south of the Delta, but we have to find ways to work together. If we fracture now it will be much harder for our legislators and industry representatives to support us - we have to keep a united front on the larger issues.

Our water system has been completely hijacked and if we don't find a way to do something, there will be a huge loss of agriculture in our areas and incredible damage to our communities. We have to push for some sort of meaningful change and action or the next decade will be a disaster. With the current Delta operations, cold water management and subsequent SGMA implementation, we are facing a very dire situation.

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**Growers at 1785 N. Fine Avenue.** There will be a call in number as well that I will provide shortly. If for some reason this date/time is unworkable, let me know.

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I look forward to hearing your ideas and working with you.

Sincerely,

Cannon Michael  
Bowles Farming Company  
[209-252-1234](tel:209-252-1234) (Direct)  
[www.bfarm.com](http://www.bfarm.com)  
[@agleader](mailto:michael@agleader.com)

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**From:** Johnny Amaral

**Sent:** Friday, July 22, 2016 8:33 AM

**To:** David Bernhardt; Dennis Cardoza; 'Smith, Ryan A.'; Catherine Karen; Denny Rehberg

**Subject:** Letter from April

Team,

I am having a hard time finding the letter from April that was signed by 6 social house Democrats asking for action on water legislation. I need it. Can someone find it for me?

**From:** Johnny Amaral

**Sent:** Friday, July 22, 2016 8:54 AM

**To:** David Bernhardt; Dennis Cardoza; 'Smith, Ryan A.'; Catherine Karen; Denny Rehberg

**Subject:** RE: Letter from April

Nevermind. I asked Scott Peterson for it and he had it in his files and send it to me

---

**From:** Johnny Amaral [mailto:jamaral@westlandswater.org]

**Sent:** Friday, July 22, 2016 8:33 AM

**To:** David Bernhardt; Dennis Cardoza; 'Smith, Ryan A.'; Catherine Karen; Denny Rehberg

**Subject:** Letter from April

Team,

I am having a hard time finding the letter from April that was signed by 6 social house Democrats asking for action on water legislation. I need it. Can someone find it for me?

**From:** Mark M. Borba

**Sent:** Tuesday, July 26, 2016 3:09 PM

**To:** Steve Patricio; Cannon Michael

**CC:** Ara Azhderian; Art Godwin; Aubrey J D Bettencourt; Bill Diedrich; Brandon Souza; Brent Walthall; Bret Sill; Chad Hathaway; Chase Hurley; Chris Hurd; Chris White; Cory Lunde; Dan G. Nelson; Dan Keppen; Dan Vink; Daniel Errotabere; Dave Puglia; Dennis Falaschi; Derek Borba; Dominic DiMare; Eric Limas; Eric R. Quinley; Eric Ruckdaschel; Erik Hansen; Gayle Holman; Georgeanne White; James L. Nickel; Jeff Janas; Jennifer T. Buckman; Joel Nelsen; John C. Harris; John Kabateck; Johnny Amaral; Jon Reiter; Kent Stephens; Kimberly Brown; Lindsay Oxford; Loren Booth; Louie A Brown; Mario Santoyo; Mark Watte; Martin McIntyre; Melissa Poole; Mike Wade; Paul Adams; Paul Parreira; Roger A. Isom; Sarah Clark Woolf; Sean P. Geivet; Shawn Coburn; Steve Chedester; Tom Barcellos; Tom Birmingham; Tony Azevedo; Trudi Hughes; William Bourdeau; Bill Degroot; Doug Philips; Jim Costa; Jim O'Banion; John Fisher; Johnny Roeloffs; Matt Fisher; Mike Stearns; Edwin Camp; Eric Borba; Todd Neves; Aubrey J D Bettencourt; Bill Luce; David Longly Bernhardt; David Orth; Dennis A. Cardoza; Dennis Nuxoll; George H. Soares; Jason R. Phillips; Joe Raeder; Nancy E Williams; John Broeske

**Subject:** RE: UPDATE: Time for action letter

**Hey.....I understand “she” may be looking for a new position.....one that thrives on “*facts, integrity, & truthfulness*”!**

**Talk about an ability to get “media attention”! ☺**



Mark Borba  
Borba Farms  
11054 W. Mt. Whitney  
Riverdale, CA 93656

559-866-5671 (o)  
559-866-5666 (f)

---

**From:** Steve Patricio [mailto:steve@westsideproduce.com]

**Sent:** Tuesday, July 26, 2016 3:00 PM

**To:** Cannon Michael

**Cc:** Ara Azhderian; Art Godwin; Aubrey J D Bettencourt; Bill Diedrich; Brandon Souza; Brent Walthall; Bret Sill; Chad Hathaway; Chase Hurley; Chris Hurd; Chris White; Cory Lunde; Dan G. Nelson; Dan Keppen; Dan Vink; Daniel Errotabere; Dave Puglia; Dennis Falaschi; Derek Borba; Dominic DiMare; Eric Limas; Eric R. Quinley; Eric Ruckdaschel; Erik Hansen; Gayle Holman; Georgeanne White; James L. Nickel; Jeff Janas; Jennifer T. Buckman; Joel Nelsen; John C. Harris; John Kabateck; Johnny Amaral; Jon Reiter; Kent Stephens; Kimberly Brown; Lindsay Oxford; Loren Booth; Louie A Brown; Mario Santoyo; Mark M. Borba; Mark Watte; Martin McIntyre; Melissa Poole; Mike Wade; Paul Adams; Paul Parreira; Roger A. Isom; Sarah Clark Woolf; Sean P. Geivet; Shawn Coburn; Steve Chedester; Tom Barcellos; Tom Birmingham; Tony Azevedo; Trudi Hughes; William Bourdeau; Bill Degroot; Doug Philips; Jim Costa; Jim O'Banion; John Fisher; Johnny Roeloffs; Matt Fisher; Mike Stearns; Edwin Camp; Eric Borba; Todd Neves; Aubrey J D Bettencourt; Bill Luce; David Longly Bernhardt; David Orth; Dennis A. Cardoza; Dennis Nuxoll; George H. Soares; Jason R. Phillips; Joe Raeder; Nancy E Williams; John Broeske

**Subject:** Re: UPDATE: Time for action letter

We need a major press conference on the Capitol steps in DC and Sac. With charts showing precipitation for year and San Luis Res EMPTY with a list of cities without water!!!!'

MISMANAGEMENT OF RESOURCES!!!!!!!

Sent from my iPhone

On Jul 25, 2016, at 11:16 AM, Cannon Michael <[cannon@bfarm.com](mailto:cannon@bfarm.com)> wrote:

We are now targeting the end of this week to complete the signature gathering process for the letter, so you have more time to work your contact lists and get additional signatures. We have an impressive list already and can use as many as possible for maximum effect.

Forward this simple email -

PLEASE REVIEW THE ATTACHED LETTER.

We need everyone: [landowners](#), farmers, water districts, businesses, city councils, rotary, supervisors, Farm Bureau, etc.

A massive show of unity will be the most effective.



**We can accept scanned or photos of signatures or a simple acknowledgement that someone wants to sign.**

<image002.gif>

For each signatory we need -

**Name**

**Title**

**Company**

**Water District**

**(if applicable)**

**City**

**All information needs to be sent to [jodi@ccgga.org](mailto:jodi@ccgga.org)**

<Allied Grower Group 7.20.16 1042am.pdf>

**From:** Johnny Amaral

**Sent:** Monday, August 1, 2016 9:50 AM

**To:** David Bernhardt; Denny Rehberg; Ryan A. ' 'Smith; Dennis Cardoza; Catherine Karen

**Subject:** No call today

Sorry for the short notice

Best,

Johnny Amaral

**From:** Bernhardt, David L.  
**Sent:** Monday, August 1, 2016 9:52 AM  
**To:** 'Johnny Amaral'  
**Subject:** RE: No call today

OK.

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]  
Sent: Monday, August 01, 2016 10:50 AM  
To: Bernhardt, David L.; Denny Rehberg; Smith, Ryan A.; Dennis Cardoza; Catherine Karen  
Subject: No call today

Sorry for the short notice

Best,

Johnny Amaral

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**From:** Petersen, Scott

**Sent:** Monday, August 22, 2016 1:22 PM

**To:** tbirmingham@westlandswater.org; Jason Peltier; Anthea Hanson - Del Puerto WD; Denis Falaschi; Lon Martin - SLDMWA

**CC:** David Bernhardt; Johnny Amaral; Dennis Cardoza (dcardoza@foley.com); Jennifer Walsh - Foley

**Subject:** Confidential: Reconsultation Process Reform Ideas

Good afternoon,

In thinking through the long game associated with summer outflow and what seems to be now imminent reconsultation on the smelt biological opinion, my boss and I are thinking that now would be a good time to try to do 2 things:

1. Generate some ideas to reform the reconsultation process to achieve a truly science based process for new RPA's that will provide an appropriate balance between flow based RPA's and non-flow based RPA's; and
2. Consider some sideboards to the reconsultation process that would provide some additional accountability and access for all stakeholders involved in the process.

In thinking this through, Rep. Costa wanted to solicit any ideas that you might have to reform or create enhanced directives regarding the consultation process or its outcomes, from a legislative perspective. Long story short, if you have any ideas regarding how to reform and/or enhance the consultation process to provide a more science based process and a more balanced outcome for species recovery, now is the time to advance them to us.

If you'd like to discuss this further, please feel free to contact me any time on my cell (202-████-████)

Thanks as always for your assistance and ideas!

Best, Scott

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

**From:** Jason Peltier

**Sent:** Tuesday, August 23, 2016 10:55 AM

**To:** Petersen, Scott; tbirmingham@westlandswater.org; Anthea Hanson - Del Puerto WD; Denis Falaschi; Lon Martin - SLDMWA

**CC:** David Bernhardt; Johnny Amaral; Dennis Cardoza (dcardoza@foley.com); Jennifer Walsh - Foley; Jon Rubin; Philip Williams; Shelley Ostrowski; Sheila Greene; Thomas Boardman; Frances Mizuno

**Subject:** RE: Confidential: Reconsultation Process Reform Ideas

Thank you Scott, your request is very timely as we have been organizing on both the questions related to BO Reconsultation and the broader questions related to: given the failed "single stressor" approach of the fish regulators how can a new regulatory approach be constructed?

We have a technical team in the formation stages and your prompt is welcomed. Jon Rubin will be in the lead for us. He will be contacting you for some initial brainstorming discussion of timing etc.

---

**From:** Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]

**Sent:** Monday, August 22, 2016 1:22 PM

**To:** tbirmingham@westlandswater.org; Jason Peltier <jason.peltier@sldmwa.org>; Anthea Hanson - Del Puerto WD <ahansen@delpuertowd.org>; Denis Falaschi <[REDACTED]>; Lon Martin - SLDMWA <[REDACTED]>

**Cc:** David Bernhardt <dbernhardt@bhfs.com>; Johnny Amaral <jamaral@westlandswater.org>; Dennis Cardoza (dcardoza@foley.com) <dcardoza@foley.com>; Jennifer Walsh - Foley <jwalsh@foley.com>

**Subject:** Confidential: Reconsultation Process Reform Ideas

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In thinking through the long game associated with summer outflow and what seems to be now imminent reconsultation on the smelt biological opinion, my boss and I are thinking that now would be a good time to try to do 2 things:

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Thanks as always for your assistance and ideas!

Best, Scott

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**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

**From:** Petersen, Scott

**Sent:** Tuesday, August 23, 2016 11:25 AM

**To:** 'Jason Peltier'; tbirmingham@westlandswater.org; Anthea Hanson - Del Puerto WD; Denis Falaschi; Lon Martin - SLDMWA; Jon Rubin; Ara Azhderian

**CC:** David Bernhardt; Johnny Amaral; Dennis Cardoza (dcardoza@foley.com); Jennifer Walsh - Foley; Jon Rubin; Philip Williams; Shelley Ostrowski; Sheila Greene; Thomas Boardman; Frances Mizuno

**Subject:** RE: Confidential: Reconsultation Process Reform Ideas

Thank you Jason.

Jon, I look forward to speaking with you!

Best, Scott

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

---

**From:** Jason Peltier [mailto:jason.peltier@sldmwa.org]

**Sent:** Tuesday, August 23, 2016 1:55 PM

**To:** Petersen, Scott; tbirmingham@westlandswater.org; Anthea Hanson - Del Puerto WD; Denis Falaschi; Lon Martin - SLDMWA

**Cc:** David Bernhardt; Johnny Amaral; Dennis Cardoza (dcardoza@foley.com); Jennifer Walsh - Foley; Jon Rubin; Philip Williams; Shelley Ostrowski; Sheila Greene; Thomas Boardman; Frances Mizuno

**Subject:** RE: Confidential: Reconsultation Process Reform Ideas

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We have a technical team in the formation stages and your prompt is welcomed. Jon Rubin will be in the lead for us. He will be contacting you for some initial brainstorming discussion of timing etc.

---

**From:** Petersen, Scott [mailto:Scott.Petersen@mail.house.gov]

**Sent:** Monday, August 22, 2016 1:22 PM

**To:** tbirmingham@westlandswater.org; Jason Peltier <jason.peltier@sldmwa.org>; Anthea Hanson - Del Puerto WD <ahansen@delpuertowd.org>; Denis Falaschi <[REDACTED]>; Lon Martin - SLDMWA <[REDACTED]>

**Cc:** David Bernhardt <dbernhardt@bhfs.com>; Johnny Amaral <jamaral@westlandswater.org>; Dennis Cardoza (dcardoza@foley.com) <dcardoza@foley.com>; Jennifer Walsh - Foley <jwalsh@foley.com>

**Subject:** Confidential: Reconsultation Process Reform Ideas

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Thanks as always for your assistance and ideas!

Best, Scott

---

**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

**From:** Johnny Amaral

**Sent:** Monday, August 29, 2016 8:27 AM

**To:** David Bernhardt; Ryan A. ' 'Smith; Denny Rehberg; Catherine Karen; Dennis Cardoza

**Subject:** No call today

Best,

Johnny Amaral



**From:** Johnny Amaral  
**Sent:** Saturday, September 10, 2016 10:43 AM  
**To:** David Bernhardt  
**Subject:** Dinner monday

Kiel weaver is coming too

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

**From:** Johnny Amaral

**Sent:** Monday, September 12, 2016 8:48 AM

**To:** David Bernhardt; Denny Rehberg; Dennis Cardoza; <Empty>; Catherine Karen; Ryan A. 'Smith

**Subject:** No call today

I'm flying to DC at the moment. Just hopped on my connector flight. Will be on the ground in DC at 4pm est.

Best,

Johnny Amaral

Deputy General Manager - External Affairs

Westlands Water District

**From:** Johnny Amaral  
**Sent:** Monday, September 12, 2016 2:53 PM  
**To:** David Bernhardt  
**Subject:** Reminder

Dinner reservations are at 7 PM at the capital Grille under my name. Myself and our two directors should be getting there about a 6:45

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

**From:** Watts, John (Feinstein)  
**Sent:** Thursday, September 22, 2016 12:08 PM  
**To:** Tom Birmingham  
**Subject:** RE: Telephone Conference

Will do

---

**From:** Tom Birmingham [mailto:tbirmingham@westlandswater.org]  
**Sent:** Thursday, September 22, 2016 3:07 PM  
**To:** Watts, John (Feinstein) <John\_Watts@feinstein.senate.gov>  
**Cc:** 'Bernhardt, David L.' <DBernhardt@BHFS.com>; 'Johnny Amaral' <jamaral@westlandswater.org>  
**Subject:** Telephone Conference

John,

I would like to have David Bernhardt and Johnny Amaral join us at 12:30 PDT. Please call:

(800) [REDACTED] - [REDACTED] pass code [REDACTED]

Thank you,  
Tom

**From:** DCardoza@foley.com  
**Sent:** Friday, September 30, 2016 8:20 AM  
**To:** Ara Azhderian  
**CC:** Jason Peltier; Johnny Amaral; JWalsh@foley.com; David Bernhardt; Dave Reynolds  
**Subject:** Re: NEWS RELEASE: Water Year 2016 Ends, California Suffered 'Snow Drought'... REALLY!??!  
**Attachments:** image005.png; image006.jpg

Thanks Ara. Very good statement. Dennis

Sent from my iPhone

Please excuse any auto correct errors

On Sep 30, 2016, at 2:50 AM, Ara Azhderian <ara.azhderian@sldmwa.org<<mailto:ara.azhderian@sldmwa.org>>> wrote:

Greetings all,

I hope everyone is managing to stay dry. The way the East Coast storms are being reported here, it sounds like you might need an ark! Tomorrow is the end of the California water-year. Yes, just one more thing to try and keep track of. Below is the SLDMWA statement on the matter, and below that the statement of DWR. For whatever reason, the Brown administration has chosen to make this year's water supply shortages about "snow drought". It is true that snow was a little less than average this year, but not much; however, rainfall in Northern California, where it matters to most, was above average and many of the state's reservoirs were near, at, or beyond flood stage, including the state's Oroville Reservoir. Lack of snow pack was not the major driver in this year's lacking water supply for most Californians; rather, ineffective regulation impaired the ability of the Projects to pump water even when fish were not present anywhere near the pumps, as demonstrated by the monitoring data and corroborated by the extraordinary low salvage numbers. Since OMR was first imposed 9 years ago, pumping rates have been severely constrained, winter/spring outflow has been augmented by a like amount, and delta smelt and winter-run salmon populations have continued to decline. How many more billions of dollars and millions of acre-feet are we going to dedicate to the USFWS and NMFS failed management strategies? How much more socio-economic destruction are we going to tolerate in the Central Valley? Here's the simple end result... Reclamation will end the water-year with over 4 million acre-feet in Northern California storage and an unpaid debt to south-of-Delta water users of over 300,000 acre-feet. And, this annual debt hole has only been deepening year-by-year. All of your constituents are heavily dependent upon import of Northern California water. Absent change, 2017 will likely be the same, or worse, irrespective of rainfall. Where does the status quo end? We will be sending around an end-of-water-year fact sheet this weekend. We appreciate your interest and efforts towards resolving these confounding problems and stand ready to assist however we can. Please don't hesitate to contact me if you should have any questions.

Best,  
ara

San Luis & Delta-Mendota Water Authority  
PO Box 2157 - Los Banos, CA 93635 - 209.826.9696  
[sldmwa logo]

The San Luis & Delta-Mendota Water Authority serves 28 member public agencies, 26 of which contract with Reclamation for water supply from the CVP. These agencies deliver water to approximately 1.2 million acres of farmland, 2 million California residents, and millions of waterfowl dependent upon the nearly 200,000 acres of managed wetlands within the Pacific Flyway.

Release Immediate  
September 29, 2016

Contact:  
Jason Peltier, Executive Director  
San Luis & Delta-Mendota Water Authority  
209.826.9696

(The following is a statement by Executive Director Jason Peltier of the San Luis & Delta-Mendota Water Authority on the end of the 2016 water year and a call for Congressional action to avoid a devastating repeat of 2016 Water Allocations)

End of Water Year Statement  
The San Luis & Delta-Mendota Water Authority Calls for Congressional Action to Avoid Devastating Repeat of 2016 Water Allocations

LOS BANOS, CA -

The U.S. Bureau of Reclamation's (Reclamation) diversion of water supplies from San Joaquin Valley farms to other uses has led to an unprecedented water supply imbalance and necessitates immediate state and federal government action to avoid a repeat of the problem in 2017, according to the San Luis & Delta-Mendota Water Authority.

"Reclamation will end this water year with over 4 million acre-feet of water in Northern California reservoirs and an IOU for over 300,000 acre-feet of water borrowed from individual farmers south of the Delta," said Jason Peltier, executive director of the San Luis & Delta-Mendota Water Authority.

In 2016, federal fishery agencies mandated Reclamation severely cut water delivery to more than 2 million acres of farms in California's San Joaquin Valley. Water quantities beyond reasonable estimates required for fishery protection have been held in Lake Shasta. About \$340 million worth of water conserved or purchased by individual farmers was taken by Reclamation to help fulfill its contractual and statutory obligations to deliver water, leaving an estimated 340,000 acre-foot deficit in San Luis Reservoir that would normally be delivered to irrigate crops. This water has yet to be returned and, as a result, more than 50 water agencies are unlikely to receive a sufficient 2017 allocation irrespective of winter weather.

"The problem of chronic, regulatory water supply shortages used to be isolated to the Westside but in recent years has grown to affect more and more farms across the Valley, including now the CVP's Friant Division," Peltier added.

While federal fishery agencies have mismanaged much of California's water supply in their attempt to protect threatened and endangered fish, populations of the protected species have continued to decline. State and federal agencies must change course to fulfill their responsibility to protect the environment and provide water supplies for the people who depend on them. Continuing the past quarter century of failed fish protection policy is unacceptable.

"Over the last nine years, we've been forced to make do with inadequate water supplies based on the multi-year drought and environmental restrictions. But having this year's miniscule 5 percent allocation diverted to other entities as a result of poor planning and management underscores the need for immediate Congressional action to help guide the federal fishery agencies toward a more balanced outcome. It's clear at this point that the people and communities served by the Central Valley Project are not a priority to the federal government and that the continuing regulatory drought is intolerable," Peltier said.

Historically, constraints on Central Valley water allocations have been directly related to two factors: the need to hold water in Lake Shasta to ensure sufficient cold water is available to support salmon reproduction and the pumping restrictions imposed by the 2008 Delta smelt and 2009 salmon Biological Opinions. Since December of 2015, these restrictions have caused over 1 million acre-feet of water to flow to the ocean that was otherwise available for water users throughout most of California.

Federal water allocations are announced every year in the spring, based on snowpack and rainfall totals. Despite above average runoff into the Sacramento-San Joaquin Delta and near average snowpack in the northern Sierra Nevada this year, many farmers on the Westside were slated to receive only 5 percent of their normal allocation. While minimal, the allocation was an improvement on the zero percent allocation from 2014 and 2015. Based upon recent federal decisions, forecasts suggest that the 2017 water supply will be no better, irrespective of winter rainfall.

"Our assumption that Reclamation would proceed as promised, that water supply would return with rainfall, was wrong, and unless Congress acts, our cities, rural communities, and wetlands will continue to pay the price. Today we call upon our elected officials in the U.S. Senate and House, with the support of our California elected officials, to take action to guide the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service and the National Marine Fisheries Service toward better outcomes and provide farmers, cities, rural communities and wetlands with normal water allocations once again," Peltier said.

###

Banta-Carbona ID, Broadview WD, Byron Bethany ID, Central Calif. ID, City of Tracy, Columbia Canal Co. (a Friend), Del Puerto WD, Eagle Field WD, Firebaugh Canal WD, Fresno Slough WD, Grassland WD, Henry Miller RD #2131, James ID, Laguna WD,

Mercy Springs WD, Oro Loma WD, Pacheco WD, Panoche WD, Patterson ID, Pleasant Valley WD, Reclamation District 1606, San Benito County WD, San Luis WD, Santa Clara Valley WD, Tranquillity ID, Turner Island WD, West Side ID, West Stanislaus ID, Westlands WD

California Farm Water Coalition, 6133 Freeport Boulevard, Second Floor, Sacramento, CA 95822

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Subject: NEWS RELEASE: Water Year 2016 Ends, California Suffered 'Snow Drought'

<image005.png>

September 29, 2016

Contact: Elizabeth Scott, DWR Information Officer, (916) 712-3904  
Elizabeth.Scott@water.ca.gov<<mailto:Elizabeth.Scott@water.ca.gov>>  
Doug Carlson, DWR Information Officer, (916) 653-5114  
Doug.Carlson@water.ca.gov<<mailto:Doug.Carlson@water.ca.gov>>

Water Year 2016 Ends, California Suffered ‘Snow Drought’  
Statewide water conservation vital for surviving uncertain climate future

SACRAMENTO -- California’s 2016 Water Year draws to a close tomorrow, ending a fourth year marked by meager precipitation that fell more often as rain than snow.

Record warm temperatures created an early and below-average runoff that was in large part absorbed by parched soil before ever reaching the State’s reservoirs. The water content of the California Sierra snowpack, often referred to as ‘the State’s largest reservoir,’ flows each spring into a series of above ground storage reservoirs that essentially serve as California’s water savings accounts in order to meet the growing demands of an uncertain climate future.

These all-too-familiar dry, warming conditions have led State water officials to describe the situation as a California ‘snow drought.’ The California Department of Water Resources<<http://www.water.ca.gov/>> (DWR) explains the term in its recently released Drought and Water Year 2016: Hot and Dry Conditions Continue<<http://www.water.ca.gov/waterconditions/docs/WY2016-Drought-brochure-lowres.pdf>>, a water year wrap-up delivered with detailed historical context.

A ‘water year,’ a 12-month time period during which precipitation totals are measured, runs from October 1 to September 30 of the following year. The year is designated by the calendar year in which it ends.

Water Year 2016 is officially listed in the record books as ‘Dry’ statewide, even though parts of Northern California experienced average to slightly above average precipitation.

The forecast for Water Year 2017 is uncertain. The National Oceanic and Atmospheric Administration’s Climate Prediction Center currently sees slightly better than even odds that weak La Niña conditions will develop this fall and winter. La Niña refers to the periodic cooling of sea-surface temperatures across the east-central equatorial Pacific. It represents the cold phase of the El Niño/Southern Oscillation cycle, nature’s year-to-year variations in oceanic and atmospheric conditions. La Niña is the opposite phase of the warm, El Niño phase that California experienced last year. There are no guarantees for substantial La Niña rainfall. Water officials warn that making seasonal forecasts of precipitation – the ability to predict now if 2017 will be wet or dry (and how wet or dry) – is scientifically difficult, and the accuracy of such predictions is very low; much less than that of a seven-day weather forecast.

Historical records are the only source of facts to study for any indication of what California may see in the form of precipitation in coming months.

Of the 18 La Niña winters since 1950-51, 16 have provided below average precipitation for Southern California’s coastal region, and 15 winters have resulted in below average precipitation for Southern California’s interior region. Above average precipitation was recorded in 11 winters for the Northern Sierra and in eight years for the Central and Southern Sierra. Water year 2011 brought the only significantly wet La Niña event in this time period.

Sixty percent of the state currently remains in severe or extreme drought. While mandatory water restrictions today vary across California, making water conservation a California way of life remains a statewide goal and a top priority in Governor Edmund G. Brown Jr.’s State Water Action

Plan<[http://resources.ca.gov/docs/california\\_water\\_action\\_plan/Final\\_California\\_Water\\_Action\\_Plan.pdf](http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf)>. Furthermore, responding to climate change is vital to minimizing conditions that likely lead to more frequent, prolonged and severe droughts.

-30-

California has been dealing with the effects of drought for four years. To learn about all the actions the state has taken to manage our water system and cope with the impacts of the drought, visit Drought.CA.Gov<<http://ca.gov/drought/>>. Every Californian should take steps to conserve water. Find out how at SaveOurWater.com<<http://saveourwater.com/>>.

<image006.jpg><<http://www.saveourh2o.org/>>

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**From:** Johnny Amaral

**Sent:** Monday, October 3, 2016 9:08 AM

**To:** David Bernhardt; Dennis Cardoza; Denny Rehberg; Catherine Karen; Ryan A. ' 'Smith

**Subject:** No call today

Sorry for the short notice, but I had to move my weekly call with the Sacramento team to 10 AM PST. So we need to cancel the D.C. call this week.

Best,

Johnny Amaral

Deputy General Manager - External Affairs

Westlands Water District

**From:** Denny Rehberg  
**Sent:** Monday, October 3, 2016 9:12 AM  
**To:** Johnny Amaral  
**CC:** David Bernhardt; Dennis Cardoza; Catherine Karen; Ryan A. 'Smith  
**Subject:** Re: No call today

Thanks,

I will be out of the country October 6-18.

On Oct 3, 2016, at 10:08 AM, Johnny Amaral <[jamaral@westlandswater.org](mailto:jamaral@westlandswater.org)> wrote:

Sorry for the short notice, but I had to move my weekly call with the Sacramento team to 10 AM PST. So we need to cancel the D.C. call this week.

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

.....  
**Mercury.**

**Denny Rehberg**

Co-Chairman

(US Congressman 2001-2013)

300 Tingey Street SE | Suite 202

Washington, DC | 20003

202.261.4000 office | [REDACTED] mobile

[www.mercuryllc.com](http://www.mercuryllc.com)

**From:** DCardoza@foley.com  
**Sent:** Monday, October 3, 2016 9:13 AM  
**To:** Johnny Amaral  
**CC:** David Bernhardt; Denny Rehberg; Catherine Karen; Ryan A. ' 'Smith  
**Subject:** Re: No call today

Thanks

Sent from my iPhone

Please excuse any auto correct errors

On Oct 3, 2016, at 12:08 PM, Johnny Amaral <jamaral@westlandswater.org<<mailto:jamaral@westlandswater.org>>> wrote:

Sorry for the short notice, but I had to move my weekly call with the Sacramento team to 10 AM PST. So we need to cancel the D.C. call this week.

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

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**From:** Bernhardt, David L.  
**Sent:** Monday, October 3, 2016 9:14 AM  
**To:** Johnny Amaral  
**CC:** Dennis Cardoza; Denny Rehberg; Catherine Karen; Smith, Ryan A.  
**Subject:** Re: No call today

Thx

David Bernhardt

On Oct 3, 2016, at 12:08 PM, Johnny Amaral <[jamaral@westlandswater.org](mailto:jamaral@westlandswater.org)> wrote:

Sorry for the short notice, but I had to move my weekly call with the Sacramento team to 10 AM PST. So we need to cancel the D.C. call this week.

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

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**From:** Bernhardt, David L.  
**Sent:** Friday, October 7, 2016 9:52 AM  
**To:** 'Johnny Amaral'  
**Subject:** Sarah's Testimony  
**Attachments:** 10 8 15 Woolf Testimony.pdf

Here you go.

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**Testimony of Sarah Woolf, Fresno County Farmer**  
**Before the Committee on Energy and Natural Resources**  
**United States Senate**

**Legislative Hearing on**  
**Western and Alaska Water Legislation**  
**October 8, 2015**

Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and members of the Committee. I was honored to be invited to testify before the Committee today, and I am hopeful that my remarks can facilitate progress on the critical legislation you have before you today because entire communities are depending upon you to find a resolution.

I am a second generation farmer. My two brothers and I grow tomatoes, garlic, and onions in Fresno County. My husband, who is here with me today, is also a second generation farmer. While our farms rely on some seasonal employees, many of our employees are long-term employees who have been with us for years. I am testifying today to share my personal perspective, although I am also an elected Member of the Board of Directors of Westlands Water District.

I know that in June, you received testimony from another California farmer, Cannon Michael, who explained the impacts of the water crisis facing California agriculture. At that time he discussed many of the key facts associated with the water challenges facing California farmers, and he explained that:

- 44% of California's 9.6 million acres of irrigated farmland are receiving zero surface water allocations from state, federal, and local irrigation projects, according to the California Farm Water Coalition Agricultural Water Supplies Survey;
- Almost 75% of the state's irrigated farm land, nearly seven million acres, will receive 20% or less of its normal surface water supply; and
- According to the California Department of Water Resources (DWR), 692,000 acres of farmland were fallowed in 2014 because of water shortages.

These are very significant facts for you to consider. However, I also want to bring to your attention the impacts felt by individuals who live and work in the cities and communities without water, people without jobs and business owners recognizing they potentially have no future. The fear and despair in people's eyes today is real, and it is heart wrenching. I know this because I spend a lot of time working in these communities.

These people are Californians, and they are working hard to produce the basic necessities for our country and our world, and of course, for themselves. They work the land while trying to

improve our schools and communities. Many of them have come to our country recently, and others from many generations before, but all with the hope of improving the lives of their families. They want the opportunities that all Americans want, an education and an opportunity for a better life.

If our elected representatives are responsible for anything, it should be to provide the most basic of needs: water, access to schools, and most importantly the ability to work. Without these basic needs, residents of our communities are forced to live in tents made of pallets behind mini marts and stand in food lines on a weekly basis to fulfill those basic needs. We cannot be the land of opportunity while communities lack water and residents are actually showering in church parking lots.

What makes our water situation so disturbing is that many of these negative effects have been imposed on our community, not by Mother Nature, but as the direct result of conscious policy decisions made by federal agency employees who believe they are following the will and direction of Congress. The people of the State of California, which includes my family, have very strong environmental values - and I deeply understand the importance of protecting the environment - but environmental concerns cannot be put above all else, without any regard to the negative impacts that are caused by the policy choices made.

When confronted about these consequences, the administrators of federal agencies claim they are merely exercising their discretion under the law in a way that causes these impacts. The Courts have agreed that they are free to cause these ill wills with your blessing. The Courts have explained:

We recognize the enormous practical implications of this decision. But the consequences were prescribed when Congress determined that “these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.” . . . Consequently, any other “[r]esolution of these fundamental policy questions” about the allocation of water resources in California “lies . . . with Congress . . .”

(San Luis & Delta-Mendota Water Auth. v. Jewell, 747 F.3d 581, 593 (9th Cir. 2014)).

Ultimately, that is why we need legislation. We need it because the Courts and the federal agencies place the consequences for these decisions at your feet and you actually have the power to address these ills. At the same time, I believe you can direct the agencies to minimize the negative impacts of the decisions on these communities, while still requiring that they be thoughtful about the impacts their actions have on wildlife and other environmental values.

It is important to note that it is unquestionable that California is in the midst of a drought. The hydrology and snowpack in the state is the only evidence you need to understand that. But the impacts of the crisis have been made worse by government decisions, interpretation of the law by fish agencies, and inaction by the Congress. It's undeniable. Lake Shasta has over one million acre-feet more of water stored today than it did during the worst drought in California history of 1977. Consider for a minute that as a result of the 2009 biological opinions that restrict water



pumping in the Delta, over 1.1 TRILLION gallons of water have been flushed to the ocean. And there have been countless other laws and government decisions on the management of California's water resources that have been just as frustrating. That is water that is lost forever, and the impact of that lost water is felt most by cities, communities, business, and farmers across the state. All while the people of the state are being forced to kill off their landscapes, capture shower water, not flush their toilets regularly, and watch their children play Saturday morning soccer on fields that resemble a sheet of sandpaper. In my opinion, the government can't have it both ways. The government cannot make decisions to flush that amount of water, while bemoaning the "drought". Not with a straight face, anyway. Simply put, the people of California are out of water because of decisions made by the people that represent them. And those decisions have resulted in devastating consequences.

From my perspective, both H.R. 2898, the Western Water and American Food Security Act of 2015, and S. 1894, the California Emergency Drought Relief Act of 2015, are efforts to address the problems we are seeing in our communities but they take very different approaches to address the issues we face. Therefore, I am deeply appreciative of your willingness to hold a legislative hearing. I am also optimistic that Members of Congress can bridge their differences between the two bills because absent enactment of legislation that gives more explicit direction to agencies, we will see no relief from the situation we face.

To that end, I want to provide constructive suggestions. Last year, a broad cross-section of local community leaders, such as the mayor of Fresno and growers from all over the Central Valley, came together to provide a unified set of concepts that we believed would be helpful for bridging the differences between last year's bills. I believe these concepts are still applicable to the bills before you today. Therefore, we ask that you:

- Provide congressional direction concerning the operation of the Central Valley Project and the State Water Project to ensure sufficient operational flexibility to restore water supply and water supply reliability. The operators of these projects must be able to capture water from the Delta during periods of higher flows and move water from north to south in a rational way.
- Extend the provisions of any legislation for a period of time that will allow communities to establish sound long term water supplies for their future;
- Establish a process that could lead to increased storage in a reasonable timeframe;
- Ensure that additional burdens are not placed on the State Water Project as a result of congressional action; and
- Recognize that the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changed conditions since its authorization, including the reality of federal budget constraints.

Both bills address most of these issues, but I believe the House proposal gives better direction to the agencies on how they should operate the projects and is a bill that, unlike the Senate bill,

offers permanent solutions. Nevertheless, we think the differences are surmountable with actual interest in finding a resolution. Again, thank you for the invitation to testify, and I am prepared to answer any questions you have.

**From:** Johnny Amaral

**Sent:** Monday, October 10, 2016 7:45 AM

**To:** David Bernhardt; Dennis Cardoza; Denny Rehberg; Catherine Karen; Ryan A. ' 'Smith

**Subject:** No call today

I have two conflicts this morning. But I'd like to reschedule the call to Tuesday. Same time.

Best,

Johnny Amaral

Deputy General Manager - External Affairs

Westlands Water District

**From:** DCardoza@foley.com

**Sent:** Wednesday, November 9, 2016 1:05 PM

**To:** jamaral@westlandswater.org; Bernhardt David Longly; Karen Catherine

**Subject:** On the call

Are we still on?

Sent from my iPhone

Please excuse any auto correct errors

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**From:** Dennis Nuxoll  
**Sent:** Friday, November 11, 2016 10:27 AM  
**To:** Johnny Amaral  
**Subject:** Re: Water Group Conference Call Monday 3:30

What are your windows next week Johnny- love to catch up

- Dennis

Sent from my iPhone

> On Nov 11, 2016, at 6:59 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>

>

> Thanks Ben. I will be in the air headed to DC. I'm scheduled to land at 4pm. So I won't be able to join the call but perhaps we can connect once I get in the ground.

>

> Best,

>

> Johnny Amaral

> Deputy General Manager - External Affairs

> Westlands Water District

>

>

>> On Nov 11, 2016, at 8:54 AM, Ben Sacher <bsacher@WGA.COM> wrote:

>>

>> Hi Johnny

>>

>> This is Ben with Western Growers, please see the invite for a call at 3:30 Eastern on Monday the 14th that Dennis mentioned in his email.

>>

>> Best

>>

>> Ben

>>

>> -----Original Appointment-----

>> From: Ben Sacher

>> Sent: Wednesday, November 09, 2016 11:53 AM

>> To: Ben Sacher; sara@naturalresourceresults.com; Dennis Nuxoll; Anne MacMillan; JRaeder@tfgnet.com; dbernhardt@bhfs.com; DCardoza@foley.com; nwilliams@swaconsult.com

>> Subject: Water Group Conference Call Monday 3:30

>> When: Monday, November 14, 2016 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).

>> Where: Call:+1 (877) 273-4202, Conference Room Number: 7229934

>>

>>

>> Please join water call on Monday Nov. 14 at 3:30 Eastern.

>>

>> Call:+1 (877) 273-4202, Conference Room Number: 7229934

>>

>>

>> From: Dennis Nuxoll <dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>>>

>> Date: November 9, 2016 at 6:19:05 AM HST

>> To: Nancy Williams <nwilliams@swaconsult.com<<mailto:nwilliams@swaconsult.com>>>

>> Cc: Sara Tucker <sara@naturalresourceresults.com<<mailto:sara@naturalresourceresults.com>>>, Anne MacMillan <macmillan@heatherpodesta.com<<mailto:macmillan@heatherpodesta.com>>>, Joe Raeder

>> <JRaeder@tfgnet.com<<mailto:JRaeder@tfgnet.com>>>, David Longly Bernhardt

>> <dbernhardt@bhfs.com<<mailto:dbernhardt@bhfs.com>>>, Dennis Cardoza <DCardoza@foley.com<<mailto:DCardoza@foley.com>>>

>> Subject: Re: Water group conf call on Monday 3 pm?

>> Sounds like 330 should work. Will send a notice

>>  
>> Sent from my iPhone  
>>  
>>  
>> On Nov 9, 2016, at 6:14 AM, Nancy Williams <nwilliams@swaconsult.com<<mailto:nwilliams@swaconsult.com>>> wrote:  
>>  
>> I can do 3, 3:30 or 4. Thanks  
>>  
>>  
>> Nancy  
>>  
>> -----Original Message-----  
>> From: Sara Tucker [<mailto:sara@naturalresourceresults.com>]  
>> Sent: Wednesday, November 09, 2016 11:01 AM  
>> To: Dennis Nuxoll <dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>>>  
>> Cc: Anne MacMillan <macmillan@heatherpodesta.com<<mailto:macmillan@heatherpodesta.com>>>; Joe Raeder  
>> <JRaeder@tfgnet.com<<mailto:JRaeder@tfgnet.com>>>; David Longly Bernhardt  
>> <dbernhardt@bhfs.com<<mailto:dbernhardt@bhfs.com>>>; Dennis  
>> Cardoza <DCardoza@foley.com<<mailto:DCardoza@foley.com>>>; Nancy E Williams  
>> <nwilliams@swaconsult.com<<mailto:nwilliams@swaconsult.com>>>  
>> Subject: Re: Water group conf call on Monday 3 pm?  
>>  
>> Sounds like a good idea but I have an existing call at 3pm. Can we do 3:30  
>> or 4pm?  
>>  
>>  
>> Sara Tucker  
>> Natural Resource Results  
>> 1455 Pennsylvania Ave NW  
>> Suite 400  
>> Washington, D.C. 20004  
>> w: 202-280-6388  
>> c: 202-295-7595  
>>  
>>  
>>  
>> On Nov 9, 2016, at 10:57 AM, Dennis Nuxoll <dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>>> wrote:  
>>  
>> Well after the earthquake I thought it might be useful to do a conf call.  
>> I know not all of you have reaction from clients that will take a while and  
>> I know we have folks flying in next week- I thought a call Monday afternoon  
>> to chat would be of use. Does that work for folks? If so I will send out a  
>> scheduling request with call in.  
>>  
>> Sent from my iPhone  
>>  
>>  
>>  
>>  
>> <meeting.ics>  
>

**From:** Johnny Amaral  
**Sent:** Sunday, November 13, 2016 5:59 PM  
**To:** David L. Bernhardt  
**Subject:** Dinner with Kiel weaver Monday night

Can you have someone from your staff make a reservation for Monday night at 7 PM.

Anywhere in DC is fine except cap Grille or delfriscos.

Make it for 7 PM and a party of six

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

**From:** Johnny Amaral  
**Sent:** Sunday, November 13, 2016 6:26 PM  
**To:** Bernhardt, David L.  
**Subject:** Re: Dinner with Kiel weaver Monday night

Ok

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

> On Nov 13, 2016, at 5:17 PM, Bernhardt, David L. <DBernhardt@BHFS.com> wrote:

>

> How about oceaniarre?

>

> David Bernhardt

>

>

>> On Nov 13, 2016, at 7:59 PM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>>

>>

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>> Make it for 7 PM and a party of six

>>

>> Best,

>>

>> Johnny Amaral

>> Deputy General Manager - External Affairs

>> Westlands Water District

>>

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**From:** Noles, Holly A.  
**Sent:** Monday, November 14, 2016 8:55 AM  
**To:** 'Johnny Amaral'; Bernhardt, David L.  
**Subject:** RE: Dinner with Kiel weaver Monday night

Hi Johnny-

Reservations have been made at Oceanaire for 7PM under David's name. The address is at 1201 F Street, NW.

Please let me know if there is anything else I can help with.

-Holly

Holly Noles  
Executive Assistant  
Brownstein Hyatt Farber Schreck, LLP  
1155 F Street N.W., Suite 1200  
Washington, DC 20004  
202.652.2352 tel  
HNOLES@bhfs.com

-----Original Message-----

From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]  
Sent: Sunday, November 13, 2016 7:59 PM  
To: Bernhardt, David L.  
Subject: Dinner with Kiel weaver Monday night

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**From:** Johnny Amaral  
**Sent:** Monday, November 14, 2016 8:58 AM  
**To:** Noles, Holly A.  
**CC:** Bernhardt, David L.  
**Subject:** Re: Dinner with Kiel weaver Monday night

That's perfect. Thank you

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

> On Nov 14, 2016, at 8:55 AM, Noles, Holly A. <HNOLES@bhfs.com> wrote:

>

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>

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>

> Please let me know if there is anything else I can help with.

>

> -Holly

>

> Holly Noles

> Executive Assistant

> Brownstein Hyatt Farber Schreck, LLP

> 1155 F Street N.W., Suite 1200

> Washington, DC 20004

> 202.652.2352 tel

> HNOLES@bhfs.com

>

> -----Original Message-----

> From: Johnny Amaral [<mailto:jamaral@westlandswater.org>]

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> Westlands Water District

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recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.

**From:** Bernhardt, David L.

**Sent:** Friday, November 18, 2016 5:39 AM

**To:** Johnny Amaral; Thomas W. (Tom) Birmingham Esq.

**Subject:** Fwd: Morning Energy, presented by the National Association of Manufacturers: Could California drought deal actually get done? — AGs ordered deposited in Exxon case — McKinley for EPA chief?

FYI

Sent from my iPhone

Begin forwarded message:

**From:** POLITICO Pro Energy <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>

**Date:** November 18, 2016 at 5:48:29 AM EST

**To:** <[dbernhardt@BHFS.com](mailto:dbernhardt@BHFS.com)>

**Subject:** Morning Energy, presented by the National Association of Manufacturers: Could California drought deal actually get done? — AGs ordered deposited in Exxon case — McKinley for EPA chief?

**Reply-To:** POLITICO subscriptions <[reply-fe8c1270736d037c73-630326\\_HTML-637932022-1376319-0@politicoemail.com](mailto:reply-fe8c1270736d037c73-630326_HTML-637932022-1376319-0@politicoemail.com)>

By Anthony Adragna | 11/18/2016 05:45 AM EDT

*With help from Annie Snider and Sara Stefanini*

**CALIFORNIA (DROUGHT) DREAMIN':** Lawmakers on both sides of the Capitol are hopeful that this could be the year Congress finally reaches a deal on California water. Time is running out, but the success or failure of drought talks could have big implications for the rest of Congress' unfinished business, including a major water infrastructure package, an energy bill and a spending measure to keep the government open past Dec. 9.

California's House Republicans have made sure all year that their drought language was in the mix whenever Congress talked water, and there's a high-profile water issue in play now: funding to help Flint, Mich., recover from its lead-contamination crisis. While Energy and Commerce Committee Chairman Fred Upton [said Thursday](#) he has a commitment from House Speaker [Paul Ryan](#) to add funds to a spending package, some argue Flint aid shouldn't move alone. "Water issues are affecting communities across the country and House Republicans have always said they will be dealt with together, not independent of one another," a House Republican leadership aide told ME.

**Hot and heavy:** Negotiations have accelerated between Sen. [Dianne Feinstein](#) and House Majority Leader [Kevin McCarthy](#) on a package to send more water to drought-parched central and southern California and prepare for a water-stressed future. Meanwhile, Democrats and Republicans leading energy bill negotiations say they have been working on West-wide drought provisions that could also gain traction. But it's not all kumbaya. Many of California's House Democrats — and, at times, Sen. [Barbara Boxer](#) — have opposed previous iterations of the drought bill, and are especially worried now that Trump's administration will be in the driver's seat for endangered species protections. "It's now a different Interior Department. The political moment for, 'Well, we'll trust the scientific process,' seems like it should have shifted," one House Democratic aide said.

**Don't forget, we've been here before.** Heated drought negotiations have become a regular fixture of late fall on Capitol Hill, and each time, like clockwork, they've fallen apart. Last year their unraveling was particularly spectacular, with Feinstein accusing Republicans of acting behind her back, and furious House GOP-ers assembling a press conference to skewer the Democrat.

**Speaking of the energy bill,** Sens. [Lisa Murkowski](#) and [Maria Cantwell](#) are expecting a counter offer today from House energy bill negotiators to a proposal the senators sent them last month, but expressed disappointment and frustration over the pace of the talks. As Pro's Nick Juliano [reports](#), discussions earlier this week indicated several sticking points remained on issues like the Land and Water Conservation Fund, energy efficiency and liquefied natural gas exports. The offer Murkowski and Cantwell sent their House counterparts last month jettisoned a proposal to make the LWCF permanent in favor of a long-term reauthorization with additional reforms. "I think it's more about a very good-faith offer ... We made a lot of compromises," Cantwell told reporters.

**TGIF FRIENDS!** Welcome to Friday! I'm your host Anthony Adragna, and James Garfield is the only president to date elected directly from the House. Your question today: What former president later went back and served in the Senate? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

*As a Pro, you have access to Pro's transition-focused newsletter: Transition 2017. This new offering covers the who, what, when and why of the presidential transition, providing the insight you need to navigate the changing landscape in Washington. It will land in your inbox every afternoon through early spring. [Sign up today](#).*

**DEPOSITIONS FOR AGs IN EXXON CASE:** Exxon Mobil's lawyers will be able to depose Massachusetts Attorney General Maura Healey and New York AG Eric Schneiderman in a lawsuit that seeks to quash the states' subpoenas for the fossil fuel giant's records regarding its climate change research and public statements on the issue, Pro's Matt Daily [reports](#). U.S. District Court Judge Ed Kinkeade made the [order](#) late Thursday as he seeks to determine whether the AGs' investigation was in "bad faith," a legal determination necessary for him to keep the case in federal court.

**TRANSITION AGENCY PAPERWORK SIGNED:** Trump's transition team can begin receiving briefings and go into federal agencies after filing the last pieces of necessary paperwork late Thursday afternoon, POLITICO's Nancy Cook [reports](#). Point people leading the transition for EPA and other domestic policy agencies will [be named](#) by next Wednesday.

**Also worth reading:** Trump's aggressive lobbying restrictions have sent a shockwave through K St., Pro's Andrew Restuccia [reports](#).

**ME FIRST: MCKINLEY FOR EPA ADMIN?** Count Rep. [David McKinley](#) (R-W.Va.), one of the strictest regulatory critics of the Obama EPA, as interested in leading the agency. The ideal EPA administrator is "someone that understands the process and does not have an agenda to do away with the agency — I think we need an EPA — but I think someone who comes from more of a business background who understands there has to be balance," he tells ME. McKinley sees those traits in his background and has expressed his interest.

**BOTTLED WATER BATTLE ROYALE:** Michigan Gov. Rick Snyder's administration is appealing a judge's order that requires officials to deliver bottled water to Flint residents who

lack verifiably safe drinking water. In a [motion](#) filed with the court Thursday, the state argued that most Flint homes have effective filters, and that going to the lengths required by the court would actually undercut long-term recovery efforts by decreasing the amount of water flowing through the system — key to re-coating the lead pipes — and sapping money from projects replacing lead pipes. Citizens groups and environmental organizations argued, and the judge agreed, that many residents lack access to bottled water due to disabilities or transportation challenges.

**\*\* A message from the National Association of Manufacturers:** It's time for America to come together. The National Association of Manufacturers believes moving forward means #BeTheSolution. Investment in infrastructure, including ways to further advance energy infrastructure, is a promising place to start. Learn more about the NAM's infrastructure initiative, "Building to Win," and how, together, we can build economic growth.

<http://www.nam.org/buildingtowin> \*\*

**HOEVEN SEES QUICK KEYSTONE APPROVAL:** One of the Keystone XL pipeline's top Senate backers, [John Hoeven](#), predicts the incoming Trump administration will quickly approve the controversial project next year. But Congress is looking at how it might step in if the executive branch could not move quickly enough, he said. "If it's a case where the president can just approve it, then that's what I expect to happen. If there is a role that Congress would need to play in order to move it along, then we'll do that," the North Dakota Republican told reporters Thursday.

**It ain't me:** Hoeven predicted the Trump administration would select good people for top posts in the Energy and Interior departments who believe "energy security comes from producing more energy from all sources," but said he wouldn't serve himself.

**WHAT A SCENE:** Sen. [Sheldon Whitehouse](#) playing traffic cop at the Senate subways. He implored a scrum of energy reporters surrounding Sen. Lisa Murkowski to "clear a path for the senator" as outgoing Sen. [Barbara Mikulski](#) hustled off to vote.

**CAN TRUMP YANK MONUMENT DESIGNATIONS?** House Natural Resources Chairman [Rob Bishop](#) wants President-elect Trump to rescind Obama's national monument designations and isn't concerned that such a move would be unprecedented: "It's never been done before and that's why people are saying, 'you can't do it.' Of course you can do it. It's always been implied," the Utah Republican said. Obama has designated or enlarged dozens of monuments during his presidency.

**Snark warning:** Asked if he'd made contact with Trump's transition team, Bishop quipped: "If you can tell me who's on the transition team, I can tell whether I've spoken to them or not." His committee, of course, has jurisdiction over the Interior Department.

**WYDEN WON'T GIVE UP ON EXTENDERS:** Even though [House](#) and [Senate](#) GOP tax writers don't seem to have much appetite for extending a host of renewable energy tax incentives during the lame duck, top Senate Finance Committee Democrat [Ron Wyden](#) isn't giving up. "I've made it very clear that I very much want renewable energy incentives, particularly where there have been pledges made, and all sides have said it was a mistake it didn't happen," the Oregon Democrat told reporters Thursday.

**SHARPENING THOSE KNIVES:** From conversations with more than half a dozen Republican lawmakers this week, it's clear EPA's Clean Power Plan and Waters of the U.S. regulations are top targets for Congress next year. Neither of those rules falls under the

Congressional Review Act, but expect GOP lawmakers to push early rollbacks as a way to earn quick points for the incoming Trump administration. "You'll see that right out of the blocks," Hoeven told ME.

**SANDERS VOWS 'TOOTH AND NAIL' FIGHT ON CLIMATE:** Donald Trump's view that climate change is a hoax manufactured by the Chinese is "way out of touch," Sen. Bernie Sanders said Thursday at a Christian Science Monitor [breakfast](#). He vowed to fight him "tooth and nail" on efforts to roll back progress on climate change and warned of broader implications from U.S. backpedaling on climate action. "If the United States turns away from combating climate change, there is no reason to believe that China, Russia, India, other large countries will not do the same," Sanders said.

**CLOSE TO BERNIE'S HEART:** Each day 1,800 tons of pine and timber slash, sustainably harvested within a 60-mile radius and ground into wood chips provide half the electricity needs of Burlington, Vt., POLITICO's Colin Woodard [reports](#). "Together these sources helped secure Burlington the distinction of being the country's first city that draws 100 percent of its power from renewable sources. The net energy costs are cheap enough that the city has not had to raise electric rates for its customers in eight years. And Burlington is not done in its quest for energy conservation." More from Colin [here](#) and check out the [Chubby Muffin](#) if you go. (Sorry, your ME host went to school in Vermont.)

**DECENT PROGRESS AT COP22:** Climate negotiators in Morocco say they've made some headway at United Nations talks but not as much as they'd hoped. "Progress has not been spectacular, I'll be quite frank," said Leon Charles, a Grenada delegate speaking on behalf of Caribbean countries. "There are some areas that in our view could have moved further than they have to date, so we would characterize progress as steady. But at least we've gotten everything off to a start, there are no major hiccups."

**INDIA STICKS WITH ITS CLIMATE COMMITMENTS:** A day before the climate talks are officially due to wrap, India's Environment Minister Shri Anil Madhav Dave told POLITICO Europe's Kalina Oroschakoff that the country was going ahead with "the commitments that we have made under the Paris agreement. We are going to move ahead on that part." Asked whether Donald Trump's election makes a difference to India's position, he said, "As of now there is no change in that stance. ... We continue with the same policy." Dave also wants the negotiations to focus more on issues related to technology transfer, capacity building and sustainable lifestyle, which are "very important" issues. Of course, climate finance or how much developed countries channel to developing countries remains a key issue.

**MUSK'S MERGER OK'D:** Electric vehicle maker Tesla and rooftop solar company SolarCity received the formal shareholder stamp of approval to merge Thursday, Pro's Esther Whieldon [reports](#). Excluding the votes of Musk and other shareholders who had an affiliation with SolarCity, more than 85 percent of shares were cast in favor of the corporate marriage, Tesla said. The companies expect to complete the transaction "in the coming days," Tesla said in a statement.

**COAL, ENERGY COMPANIES PAST HOEKSTRA CLIENTS:** Former Rep. Peter Hoekstra, a potential Donald Trump pick to run the CIA, currently represents Michigan-based oil production outfit [Core Energy](#) through his Hoekstra Global Strategies firm, POLITICO's Benjamin Oreskes [reports](#). In his work before that, at Greenberg Traurig and Dickstein Shapiro, Hoekstra [lobbied](#) on behalf of multiple domestic corporations, including coal giant Peabody Energy.



**FAISON'S LATEST LOBBYIST ADDITION:** Zakir Baig, a former aide to Sen. [David Vitter](#), registered to lobby for ClearPath Action Fund, Jay Faison's Republican climate group, on H.R. 4979, the Advanced Nuclear Technology Development Act of 2016; H.R. 8, the North American Energy Security and Infrastructure Act of 2015; S. 2012, the North American Energy Security and Infrastructure Act of 2016; and H.R. 4622, the Carbon Capture Act (h/t POLITICO Influence).

**FELONY CHARGES OUT IN DAKOTA ACCESS PROTESTS:** A judge dismissed felony charges against 139 demonstrators fighting the Dakota Access pipeline in North Dakota, the Bismarck Tribune [reports](#). Each of the protesters faced a felony count of conspiracy to endanger by fire or explosion and two other misdemeanor counts.

**LAST REGULATORY AGENDA RELEASED:** The Obama administration released its [final regulatory agenda](#) Thursday afternoon. And if they're worried about congressional backlash to so-called midnight regulations, they aren't showing it. EPA intends to complete more regulations concerning HFCs and revamping its greenhouse gas reporting program before the end of the administration, while the Army Corps of Engineers has begun work on a rule overhauling its consultation process with Native American tribes.

**MOVER, SHAKER! NEW NARUC PRESIDENT:** Pennsylvania Public Utility Commissioner Robert Powelson has become the 128th president of the National Association of Regulatory Utility Commissioners. He replaces Immediate Past President Travis Kavulla of Montana.

## QUICK HITS

- Southern drought to intensify through winter, NWS predicts. [Tucson News Now](#).
- Momentum on climate change poses hurdle for Trump. [Houston Chronicle](#).
- Appeals court revives Energy Future bond claims. [MarketWatch](#).
- N.Y. regulators approve FitzPatrick nuclear plant sale. [Syracuse.com](#).
- Trump pullout from climate deal would make odd couple with Nicaragua. [Reuters](#).
- The Trump Effect on Environmental Investing: Positive? [AP](#).

## HAPPENING FRIDAY

10 a.m. — "[IEA's World Energy Outlook 2016](#)," The Center for Strategic and International Studies, 1616 Rhode Island Avenue NW

2 p.m. — The Center for Strategic and International Studies [launches](#) the U.S.-India State and Urban Initiative, 1616 Rhode Island Avenue NW

## THAT'S ALL FOR ME!

**\*\* A message from the National Association of Manufacturers:** Over 1,100 business leaders sent a message to the president-elect last week: it's time for healing and to come together. The letter, led by the National Association of Manufacturers, stressed the "urgent need to restore faith



in our vital economic and government institutions and to bolster the promise of America." To #BeTheSolution, let's start with infrastructure, a bipartisan priority. Let's rebuild our roads, bridges, ports, passenger rail and transit systems. Let's invest in pipelines, railroads, tunnels and airports as well as drinking water and wastewater systems. The "Building to Win" initiative lays it all out. From transportation infrastructure to the energy infrastructure that powers our country, we can build a stronger, more inclusive economy. America is falling behind the rest of the world, but with a serious, targeted plan we can secure our economic leadership, spur real economic growth and offer more people the dignity of work. Learn more about how manufacturers are committed to #BeTheSolution. <http://www.nam.org/buildingtowin> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2016/11/could-california-drought-deal-actually-get-done-020193>

## Stories from POLITICO Pro

### **Upton: Flint aid to be attached to spending package** [Back](#)

By Annie Snider | 11/17/2016 12:54 PM EDT

House Energy and Commerce Chairman [Fred Upton](#) said that aid to address lead contamination in Flint, Mich., will most likely hitch a ride on a spending package, rather than the Water Resources Development Act that is currently being negotiated.

"We'll see how this plays out, but the thought is at this point that we'll do a CR through the end of February or so. Our goal is to have it in that. If not, it will be in the omnibus. It will be in one of the two, and our preference is that it be in the CR," Upton told reporters this afternoon.

The House and Senate both approved aid packages for Flint in their WRDA bills, although the packages differed significantly, with the Senate measure spending \$220 million on Flint and infrastructure programs for other communities, and the House provision offering a \$170 million authorization to aid communities with a lead contamination crisis. Key negotiators this week have said the WRDA negotiations are going slower than they would like, throwing into question whether a final package will be completed this year.

Upton said House Speaker [Paul Ryan](#) has reiterated his commitment to getting Flint aid done. He said a final deal would "probably" come in at the House funding level, but as appropriations.

"Flint's going to get their money, that's the bottom line," Upton said.

[Back](#)

### **Senate energy bill negotiators eager for House counteroffer** [Back](#)

By Nick Juliano | 11/17/2016 05:37 PM EDT

House energy bill negotiators are expected to deliver a counteroffer on Friday to a proposal the senators sent them last month, Sens. [Lisa Murkowski](#) and [Maria Cantwell](#) said today after an hourlong meeting with their counterparts from the lower chamber.

The chair and ranking member of the Senate Energy and Natural Resources Committee seemed frustrated at the slow pace of negotiations. Murkowski and Cantwell sent over a detailed offer three weeks ago that included hundreds of pages of legislative text, but they said discussions earlier this week indicated several sticking points remained on issues like the Land and Water Conservation Fund, energy efficiency and liquefied natural gas exports.

"I think it is important that we actually get something concrete back, and it's just been disappointing that it has taken this long," Murkowski said.

The senators' offer backed away from a call for a permanent LWCF reauthorization — something House Natural Resources Chairman [Rob Bishop](#) had labeled a nonstarter. Instead, the senators proposed extending the LWCF for "a very, very long period of time," and included additional reforms beyond what was in the original Senate energy bill (S. 2012), Cantwell said.

"I think it's more about a very good-faith offer. ... We made a lot of compromises," Cantwell told reporters.

Bishop left the meeting saying they may be able to agree on some small-bore provisions but remain far apart the biggest pieces of the bill. With every day that goes by, he said, "my optimism kind of fades." House Energy and Commerce Chairman [Fred Upton](#) said, "We're going to keep talking."

[Back](#)

**Massachusetts, New York AGs to be deposed in Exxon climate case** [Back](#)

By Matt Daily | 11/17/2016 06:31 PM EDT

A federal judge ruled today that Exxon Mobil's lawyers could depose Massachusetts Attorney General Maura Healey in Dallas as part of the oil company's civil lawsuit against the states that have targeted its climate change activities.

In the [order](#), U.S. District Court Judge Ed Kinkeade also said he intended to order New York AG Eric Schneiderman to travel to Texas to be deposed in the suit that seeks to quash the states' subpoenas for Exxon's records regarding its climate change research and public statements on the issue.

Healey and Schneiderman are probing whether Exxon engaged in fraud by downplaying the threat to its business posed by potential climate change regulations, while Exxon has countered that the prosecutors' actions were a politically motivated campaign designed to punish the company for advocating a policies the attorneys general opposed.

"We did not start this, but we will see it through and will vigorously defend ourselves against false allegations and mischaracterizations of our climate research and investor communications," Exxon spokesman Alan Jeffers said in a statement.

Kinkeade is seeking to determine whether the AGs' investigation was in "bad faith," a legal determination necessary for him to keep the case in federal court. If he does not find fault with their actions, the case will be sent to state court.

A spokesman for Schneiderman said only that the AGs office would "respond appropriately." Healey's office was not immediately available to comment.

[Back](#)

## **Trump team files paperwork to gain admission to federal agencies [Back](#)**

By Nancy Cook | 11/17/2016 05:43 PM EDT

The Trump transition team filed the last pieces of necessary paperwork late this afternoon that enable it to start receiving briefings and to go into federal agencies.

The document, called the Memorandum of Understanding or "[MOU](#)," basically kicks off the transfer of power from one presidency to the next and lets the future Trump administration begin to think through its plan for the federal government.

Vice President-elect Mike Pence signed the document, as did the White House chief-of-staff Denis McDonough. A huge part of the agreement is ensuring the confidentiality of government secrets and processes.

"The president has identified a smooth transition to the next administration as a key priority for his final year in office," said White House spokesman Brandi Hoffine. "Accordingly, administration officials across the government have been preparing for months to welcome the incoming administration and deliver to them the materials and resources they need to hit the ground running,"

"The president-elect's team has now completed the necessary steps for an initial group of authorized individuals to begin receiving briefings and other materials from our transition teams at select agencies across the government. We expect to receive additional names for a wider range of agencies from the President-elect's team as the transition work continues, and we will facilitate those requests on a rolling basis."

The delay in completing the MOU stemmed from the leadership shake-up on the Trump transition team, when its former leader, Gov. Chris Christie, was sidelined last Friday. This turmoil stalled the transition efforts for roughly one week and prevented the Trump team from getting in touch with federal agency officials, or even visiting the buildings.

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## **Trump transition to announce point people for USDA, EPA by Wednesday [Back](#)**

By Catherine Boudreau | 11/17/2016 12:27 PM EDT

President-elect Donald Trump's transition team will announce the people leading the hand-off efforts for the Agriculture Department and other domestic policy agencies by Wednesday, Republican National Committee chief strategist Sean Spicer said on a conference call today.

The transition team [announced](#) Wednesday night that it will require incoming officials to terminate their lobbying registrations and agree not to lobby again for five years after leaving the administration. The move created uncertainty around whether Michael Torrey, the original point man for USDA, would keep his post.

"What's crucial to understand is that instead of looking back, [this policy] is looking forward," said Spicer, adding that they want to make sure people leaving administrative posts can't use their service to enrich themselves.

Torrey, who has lobbied for entities like Little Caesars, Dean Foods and the American Beverage Association as recently as September, presumably could retain his position leading the USDA changeover as long as he terminates his lobbying registration and submits written evidence to Trump's transition team as soon as possible.

The people leading the transitions at the departments of Interior, Energy, Labor, Health and Human Services, the EPA and others also will be announced by Wednesday.

[Back](#)

## **Trump's lobbying ban sends chill through K Street [Back](#)**

By Andrew Restuccia | 11/17/2016 09:46 AM EDT

Trump's new [lobbying restrictions](#) sent a shockwave through Washington's vast network of professional influencers.

While Trump first proposed the five-year lobbying ban during his now-famous "drain the swamp" speech in October, few expected him to actually follow through on the pledge — which is more stringent than Obama's lobbying restrictions. Obama banned administration officials from contacting their former agency for two years, but they could still lobby other parts of the government.

People familiar with the transition said Trump aides were infuriated by [stories](#) detailing the many lobbyists on the transition. After taking control of the transition from New Jersey Gov. Chris Christie, Vice President-elect Mike Pence and other Trump aides insisted on making good on their five-year ban.

But Democrats and Republicans alike warn that the ban could compound Trump's problems recruiting top-tier talent. And they say it will discourage lobbyists from formally registering to avoid having to comply with the rule.

"It will only incent further motivation to avoid having to register as a dreaded lobbyist," one Democratic lobbyist said.

Washington saw a wave of lobbying de-registrations in the run-up to Obama's presidency, with the influence sector worrying that they'd be passed over for jobs. Similarly, officials leaving the administration have taken advantage of federal rules requiring people to register as lobbyists only if lobbying makes up 20 percent of their activity.

Norm Eisen, the former chief ethics lawyer in the Obama White House, called the rules a "good start," but he said they need to be expanded to avoid potential loopholes and cover all people with potential conflicts of interest — whether they're registered or not. Eisen met with Christie's transition aides to discuss the proposal, even proposing a draft executive order on the issue.

"And if the president elect is truly serious about 'draining the swamp,' he must do more, like dealing with his own profound conflicts of interest by establishing a true blind trust for his businesses, and stopping the gusher of campaign cash that has flooded the swamp," he added.

Trump, in his October campaign speech, called for changing the definition of lobbying to "close all the loopholes that former government officials use by labeling themselves consultants and advisers when we all know they are lobbyists."

Still, many Republicans welcomed the five-year ban.

"It allows people to choose between serving America and serving themselves," said George David Banks, a former George W. Bush environmental aide and Trump supporter. "Sure, it will limit the number of people who are in the mix. But I don't think it will have a significant impact on the number of good people who want to serve the Republic."

Trump's lobbying announcement came after days of uncertainty about how the transition would deal with lobbyists. Trump aides originally [told reporters](#) that Pence ordered the removal of all lobbyists from the team. That was news to the lobbyists on the transition, which as of yesterday had not been asked to leave.

Indeed, Trump's code of ethics requires that lobbyists de-register in order to stay on the team. That's likely to put the lobbyists on the transition, who have no guarantee of getting a job in the administration, in a bind. Do they give up their lucrative clients for the opportunity to help shape Trump's administration? So far, the lobbyists on the team have not responded to POLITICO's questions about whether they will de-register. Lobbyists on the team said they were surprised by Wednesday night's announcement.

The Trump transition's efforts to detail its code of ethics brings the operation one step closer to being able to enter federal agencies to plot the handoff of power, a process that was delayed for several days while Obama administration officials waited for Pence to sign a memorandum of understanding. The transition still needs to publicly announce members of the so-called "landing teams" that will work with the agencies. Aides said they will begin announcing members of the teams on Thursday.

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**Brady says tax reform will be deficit-neutral** [Back](#)

By Brian Faler | 11/15/2016 02:40 PM EDT

House Ways and Means Committee Chairman [Kevin Brady](#) predicted tax reform will happen next year, and said the plan he's working on is designed to be deficit-neutral.

"Tax reform is going to happen in 2017," he said today at a tax conference sponsored by Bloomberg BNA and KPMG. "We're designing this to break even."

"We're already in the ballpark [of neutrality] with the blueprint — I feel comfortable where we're at," he said.

Brady said he couldn't lay out a timeline for action next year, such as when his committee would act or when the entire House would vote. That's still to be determined, Brady said.

Asked about the possibility of financing a major infrastructure package with revenue raised by reform, he said: "I have not seen the details of the package being developed by the Trump administration — I think it's under construction as we speak right now and so we'll have that discussion."

Diverting revenue to pay for highways would leave less for reducing tax rates, which Brady alluded to, saying, "in our blueprint, we applied those revenues to more growth and more competitive rates."

Brady also said he's not interested in reviving a rump group of tax extenders in a lame-duck session of Congress, and expressed hope a President Donald Trump would kill the Obama administration's recently released "earnings stripping" regulations.

"I'm hopeful that he stops those regulations cold because, while the revised regulations are better than the proposed ones initially, they are still damaging to the economy."

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### **Hatch suggests extenders unlikely in lame duck [Back](#)**

By Nick Juliano | 11/16/2016 02:16 PM EDT

Senate Finance Committee Chairman [Orrin Hatch](#) today said Republicans were not enthusiastic about extending temporary tax breaks before the end of the year, further dampening the prospects for energy incentives left out of a larger deal last year.

"I don't know" whether tax extenders legislation will come up in the lame-duck session, Hatch told reporters this afternoon. "I don't think the leader is very excited about having tax extenders, and I'm not either."

Supporters of microturbines, fuel cells and other clean energy technologies have been pushing to renew their tax credits, which were omitted from last year's wind and solar tax credit extensions. But their chances of success has diminished significantly since President-elect Donald Trump's victory last week, which elevated overall tax reform as a top priority for the incoming Congress.

House Ways and Means Chairman [Kevin Brady](#) said Tuesday that he also was [not interested](#) in passing a tax extenders bill this year.

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### **America's First All-Renewable-Energy City [Back](#)**

By Colin Woodard | 11/17/2016 08:12 PM EDT

To understand what makes Burlington unlike almost any other city in America when it comes to the power it consumes, it helps to look inside the train that rolls into town every day. The 24 freight cars that pull up to the city's power plant aren't packed with Appalachian coal or Canadian fuel oil but wood. Each day 1,800 tons of pine and timber slash, sustainably harvested within a 60-mile radius and ground into wood chips, is fed into the roaring furnaces of the McNeil Generating Station, pumping out nearly half of the city's electricity needs.

Much of the rest of what Burlington's 42,000 citizens need to keep the lights on comes from a combination of hydroelectric power drawn from a plant it built a half mile up the Winooski River, four wind turbines on nearby Georgia Mountain and a massive array of solar panels at the airport. Together these sources helped secure Burlington the distinction of being the country's first city that draws 100 percent of its power from renewable sources. The net energy costs are cheap enough that the city has not had to raise electric rates for its customers in eight years. And Burlington is not done in its quest for energy conservation. Add in the city's plan for an expansive bike path, a growing network of electric vehicle charging stations and an ambitious plan to pipe the McNeil station's waste heat to warm downtown buildings and City Hall's goal to be a net zero consumer of energy within 10 years starts looking achievable.

The environmental sustainability revolution has spread to other sectors of civic life. Outside the gates, farmers, community gardeners and food-minded social workers tend fields and plots spread out over 300 acres of once-neglected floodplain just two miles from the city's center. Together the agricultural enterprises in the valley—working land controlled by a non-profit that partners with the city—grow \$1.3 million in food each year, much of it sold at a massive, member-owned cooperative supermarket, its own origins traced back to City Hall.

How did this former logging port on the shore of Lake Champlain transform itself over the past 40 years from a torpid manufacturing town in the far corner of a backwater state to a global trendsetter in sustainable development and green power? The answer carries particular resonance at a time when the United States' commitment to environmental issues and addressing climate change is suddenly less certain than at any time in a decade. Cities like Burlington, the largest city in a state whose tourism and agriculture dependent economy is vulnerable to climate change, have had to craft their own solutions to address global warming and to insulate themselves from the vagaries of global energy markets. In Burlington, however, these solutions were not spearheaded by civic or corporate leaders, as is now often the case when cities tackle urban issues. Instead, Burlington is achieving its energy independence almost entirely through initiatives developed by its municipal government—a government that has been decidedly left-leaning for decades. In fact, one of the people most responsible for setting in motion the chain of policies and programs that now distinguish Burlington was a ground-breaking social democratic mayor with unruly hair, a thick Brooklyn accent and a message that would many years later carry him deep into the 2016 presidential campaign.

"There's nothing magical about Burlington," says Taylor Ricketts of the University of Vermont's Gund Institute for Ecological Economics. "We don't have a gift from nature of ample sun or mighty winds or powerful rivers, so if we can do it, so can others."

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Founded by the raucous revolutionary bad boy Ethan Allen and his brothers in the 1770s, Burlington grew from village to city in the mid-19<sup>th</sup> century on the strength of the timber trade,. The forests of Quebec, the Green Mountains and the Adirondacks were close at hand by lake and river, the markets of Montreal and New York City were reachable by canals and the St. Lawrence river. By 1870, the Burlington waterfront was a tangle of lumberyards, warehouses and furniture factories. Dams and woolen mills were popping up along the fast moving Winooski River, attracting waves of immigrants, first from Ireland and later Quebec. Early 20th century Burlington was a working class city of 25,000 with a college on the hill, the future University of Vermont.

But by the middle of the 20<sup>th</sup> century Burlington's growth had plateaued. That's when an ad campaign that branded the state as "the Beckoning Country" of unspoiled natural and civic

beauty began to attract disaffected city dwellers looking for an escape from the turbulence of an era defined by the Vietnam war, political assassinations, urban unrest, Watergate and gas shortages. Some of these newcomers were "back to the landers." Some who were eligible for the draft liked northern Vermont's proximity to Canada. Not a few, lacking the cash to buy one of Vermont's rundown dairy farms, pooled resources with friends and established communes. Thousands more were satisfied with bourgeois life, but wanted to do it in a safer, healthier environment.

"They'd advertised the state as pristine and untouched, and there was a public perception that true democracy still lived in Vermont, with its town meetings," says Amanda Gustin of the Vermont Historical Society. "It didn't necessarily match the reality, but people had the perception that this was a place where people could get away from the problems of wider society and get back to the land." Because many who came were from college-educated middle class and upper middle class backgrounds—and had engaged in social justice organizing before their arrival—they would have an outsized effect on the state's political trajectory generally and its largest city in particular.

One of the tens of thousands who put down roots in Burlington in this era was a struggling 29-year-old Brooklyn native named Bernie Sanders, who'd cut his teeth in social activism fighting housing discrimination at the University of Chicago. Sanders had first come to Vermont in 1964, spending two summers with his first wife in a converted maple sugar shack near Montpelier. They divorced and he spent the next three years in a hamlet in the state's remote, idyllic Northeast Kingdom with the mother of his only child. In 1971, Sanders was campaigning for one public office after another, living in a bleak Burlington apartment, surviving by writing freelance articles for an alternative newspaper and on electricity he borrowed with an extension cord from his neighbors. He ran for the U.S. Senate and governor in 1972, again for Senate in 1974 and governor in 1976. His message—the same one you heard on the 2016 campaign trail—never got him more than 6 percent of the statewide vote, but at some point Sanders noticed he was doing best in Burlington itself. He decided to run for mayor in 1981 and, buoyed by an 80-percent share of voters under 36, he defeated the five-term conservative Democratic incumbent, Gordon Paquette, by 10 votes. "It was a coalition that included students and professors, but also working class people, neighborhood activists, and environmentalists," recalls Peter Clavelle, who joined Sanders's administration and succeeded him as mayor. "And the fundamental basis of it was that government can better serve our needs and respond to the challenges of our community."

In 1983, voters re-elected Sanders by 22 points in a three-way race and turned many of his council adversaries out of office. That's when planning for what we'd later come to call sustainability got underway through a new government department, the Community and Economic Development Office, which focused on developing the city's assets, from local small businesses to the natural environment. "It's not rocket science," says Bruce Seifer, a founding staffer who moved to Burlington from New York in 1973 and would later run the department. "We asked the community what they wanted and then we gave it to them."

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Self-sufficiency and environmental protection were key goals, and the Sanders administration came into office with a head start. Under Paquette, the city-owned Burlington Electric Department decided to replace its aging coal-fired power plant on the lakefront with a wood-fired one in the Intervale, a neglected stretch of Winooski River floodplain where the last dairy farmer was surrounded by junkyards. Completed during Sanders' first term, the McNeil biomass plant could use local wood to generate nearly all of the city's needs (though half the power—then and now—is owned by the plant's minority stakeholders and winds up in other towns.) The



Burlington Environmental Alliance opposed it with pen-and-ink posters of a clear-cut landscape under the words "The Wood Chip Plant is Coming." But the plant opened with a staff of full-time foresters charged with developing green rules and protocols for their suppliers. "To this day there are no sustainable harvesting standards in the State of Vermont except for ours," says Burlington Electric's chief forester Betsy Lesnikoski, who has been monitoring harvests at the plant for 33 years. "We invented the wheel."

The city's development office pushed forward on multiple fronts, helping establish a non-profit corporation that promoted energy savings in the city's public and commercial buildings; bike paths along the previously inaccessible waterfront to reduce automobile use; curbside recycling pick-up well ahead of its time; and restoring buildings as business incubators.

"A lot of communities are 'whale hunters,' they think the answer is to business recruitment is to go after the big fish," Seifer says. "Instead we created a loan fund and helped local businesses and non-profits get started, places that would reinvest their time and effort locally, hire from within, serve on boards, and when times are tough not move out of state because they live here." Ironically, much of the money supporting many of these 1980s initiatives came via federal grants awarded under Ronald Reagan's administration.

One day in 1987, an idealistic entrepreneur called on City Hall. Will Raap moved to Burlington from the San Francisco Bay area the week Sanders had been elected and had spent the previous six years building Gardener's Supply, which sold people the things they needed to grow their own food at home. While planting vegetables at his plot in the city-owned community gardens in the Intervale, Raap discovered how remarkable the floodplain soil was and decided to move his business to an abandoned pig slaughterhouse across the road from the new McNeil power station.

"I'd asked myself: Could we be a big catalyst for food being grown in farms in Burlington for Burlington?" recalls Raap, whose company began testing various crops outside their new digs. "There was no demand for local food then—you could grow it but you couldn't sell it—so the question was how could you create a hub that could take this abused land and put it in production to educate and support the next generation of farmers while simultaneously building a market place?" That, he told Sanders's officials, required a partnership with the city. "We gave Bernie three choices: use waste heat from McNeil to heat 100 acres of greenhouses; start a market garden and see if it makes sense financially; or help us make 100,000 tons of compost to restore fertility to the valley," he recalls. "Bernie chose the third one and gave us a \$7,000 loan." Tens of thousands of tons of yard and leaf waste started flowing to Intervale fields instead of the landfill.

Two decades on, the non-profit Raap set up presides over 350 acres of reclaimed agricultural land that's home to a dozen farms, from established growers to novice farmers taking advantage of low-rent farm "incubator" land. There's the community gardens, a 600-member community-supported agriculture operation (the kind where you buy shares and get weekly boxes of harvested food in exchange), a nursery for growing riverfront buffer trees, and the Intervale Food Hub, where boxes are loaded for delivery to people at their place of work or to 150 families identified by social service agencies as being in need. Together they produce \$1.3 million in foodstuffs for the Burlington market annually and provide 30,000 pounds of fresh food to families in need. "If we're going to make the world a better place, if you can get food right, then you can get the environment and economic development and human health right," says executive director Travis Marcotte, who grew up on a dairy farm a few miles south of the city. "Burlington would be very different if we hadn't had this here, creating opportunity and familiarity with sustainable agriculture."

Sanders stepped down in 1989 to run for Congress, and voters replaced him with the development office's head, Peter Clavelle. A native and former city manager of the neighboring mill-town of Winooski, Clavelle's administration would push the sustainability drive to a new level. In his first term the city instituted mandatory recycling, fought off big box stores at a proposed mall, and got an \$11.2-million bond passed to pay for insulation and other energy efficiency improvements in homes, businesses and public buildings. This initiative prevented the need to buy power from Hydro Quebec, whose dams were controversial because they flooded tribal lands in Quebec's far north, all with public support. "The beautiful thing is that we do as a general rule see the common good as a fundamental component of life here," observes Jennifer Green, the city's sustainability coordinator. "We all have to give a little for everybody to get some."

But Clavelle got ahead of the electorate on another front—extending benefits to the domestic partners of city employees—and it cost him. "Today it's hard to imagine it was an issue, but in 1993 it was," he recalls. Conservatives turned out to vote in huge numbers; Clavelle's coalition complacently stayed home. "So I lost an election and at the time I said, 'I'm done with politics, I'm done with Burlington.' I packed up my family, and we moved away for a voter-inspired sabbatical," he says. They ended up on Grenada, the Caribbean island nation with a comparable surface area and population to metropolitan Burlington. "When you're on an island, you really see what practices are sustainable and what practices aren't," he says, recalling ships unloading frozen chicken and orange juice while island chickens had little access to the market and citrus fruit rotted in the groves. "That was a transformational moment for me."

He returned to Burlington, got re-elected in 1995, and oversaw the process of developing the Legacy Plan, a citizen-sourced vision for how Burlington could become a sustainable community. "What is sustainable development? Is it the most overused buzzword of the 1990s or is it the most important concept for the survival of our planet and our communities," he says. "I decided a long time ago that its both, and that we need to go beyond the branding and rhetoric and create actual examples that will resonate and make a difference in people's lives." The plan, completed in 2000, created the guiding vision that has been followed since: integrating local business development and farm-to-table efforts, putting New Urbanist solutions ahead of sprawl and prioritizing multi-modal transport over highways. The plan also had a major environmental component that emphasized recycling, energy conservation and investment in non-polluting transportation and renewable power. "This was the visionary document," says Green, who was hired to implement it. "It got the big city departments all focused on taking this on."

And without even quite noticing itself, the city built its way toward a sustainability milestone that would turn heads worldwide.

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Jon Clark has one of the more unusual offices in town. The exterior door is a gasketed bulkhead, the windows are the sort you'd find at a city aquarium and it's underwater for large periods of the spring, submerged by the roaring river falling over the dam barrier outside. Here, at computer terminals nestled above the dam's turbines, but two stories beneath the dam pond, Clark has monitored and maintained the 7.5-megawatt Winooski One hydroelectric plant since it was constructed in 1994. Visitors clamber down a long flight of metal stairs and through the foyer to the humming generator hall to reach the room, , where Clark is often the only person on the scene. These days he can keep atop of the station's vitals with a smart phone app, and there's a guy who covers for him two nights a week and every other weekend. "I probably spend more time here than I do at home, so I treat it as such," Clark says. "I try to keep it as tidy as possible."

Tidy it is, and also financially effective. Built by private developers on Burlington-owned land in neighboring Winooski, the city exercised a onetime option to buy the facility in 2014 via a \$12-million voter-approved bond. The plant was, in a sense, free. The bond payments were about the same as the cost of the power the Burlington Electric Department would otherwise have had to purchase elsewhere. The cost of the power was now insulated from the fluctuations in oil and gas markets, prompting the Moody's credit agency to raise the utility's credit rating. And it made the city the first in the nation to obtain all of its power from renewable sources, a distinction that went almost unnoticed at the time, relegated to the third paragraph of the *Burlington Free Press's* story on the city finalizing the dam's purchase. "This was the product of a long term vision and a sequence of mayors," says Ricketts at the Gund Institute. "It kind of snuck up on us."

Indeed, because Burlington owns its own utility with its own citywide grid, the city could theoretically close its three connections with the wider world and generate all of its power combining McNeil, Winooski One, wind turbines and solar panels. This led a visiting writer for *Orion* magazine to declare this was where she would move to wait out a zombie apocalypse. This would only be an apocalyptic measure, as half of McNeil's power is actually owned by the plant's minority owners. Burlington makes up for this by buying hydro power from further afield, but it is still able to operate a renewable grid without asking rate payers to pay extra for it. "The conventional wisdom is that you have to pay more for renewables, but it's not true," says Burlington Electric's general manager, Neale Lunderville. "We haven't raised rates in eight years."

One of the reasons rates are low is that the city and its co-owners eight years ago invested \$11.5 million in a state-of-the-art air scrubber that qualified the plant to earn the highest value renewable energy credits. They're able to sell those to out-of-state utilities (who need to meet their standards but lack clean generating stations of their own) and then—to meet their own renewable standards—buy back cheaper credits to cover the power. The net profit—\$6 to \$9 million a year—is used to offset the rates Burlington Electric charges customers. "It's a terrific model for cities across the country," says Sandra Levine, senior attorney at the Conservation Law Foundation's Montpelier office. "With the challenges of climate change, we should be looking to our electricity sector to move away from fossil fuels and this is a good way to do it."

Current mayor Miro Weinberger, a Democrat elected in 2012, was inspired by the international attention Burlington has received since achieving the renewable energy milestone. "It's really pushed us to think hard and big about where we go from here," he says. "That's when we started looking at what net zero would look like."

A city is considered net zero when it generates as much energy as it consumes, not just in the form of electricity, but heat and transportation as well. Achieving such a state, Weinberger argues, would further insulate Burlington from the volatility of fossil fuel markets, saving money and luring more entrepreneurs and businesses with brands linked to sustainability, such as Ben & Jerry's ice cream, green cleaning products maker Seventh Generation and climate change-conscious Burton Snowboards. "We've got our own goals around eliminating our carbon footprint completely, and being based in a city where that's easily possible is very important to us," says Joey Bergstein, general manager at Seventh Generation, which started in the early 1980s as an off-shoot of Gardener's Supply. "Our history here is very much driven by the fact that the city and the state of Vermont are so aligned with our values."

Proposals to use the waste steam from the McNeil plant to heat buildings and businesses have been kicking around for a quarter century, but ran against an economic obstacle. Building the distribution system is a big upfront cost, but attracting users from existing homes and buildings is a slow undertaking. What was needed was the equivalent of an anchor store at a mall, a big new

user ready to buy lots of heat from day one, preferably downtown so that additional users could be easily patched in as their existing boilers reached replacement age. Now it looks like that's happening. On November 9, city voters approved a 14-story, multi-use development that will replace a dying indoor mall, that now cuts off several central streets, with a sidewalk-friendly restaurants and retail and market and affordable apartments.

At the city-owned airport, they've reduced demand for heat and electricity by replacing lighting and air conditioning systems and properly insulating the terminal's roof. There's a 500-kilowatt solar array that's been providing enough power to supply 60 homes and a rain garden on the roof of the parking garage. (A 10-megawatt wind farm from which the city draws power can be seen on a nearby ridge.) "We're a small airport and we don't have a lot of money, but what we try to do is to introduce a greener way whenever we change a bulb, replace a window, or repair our roof in a way that gives us a greater energy savings and return on our investment over time," says city aviation director Gene Richards, who cut electricity usage at the airport by a fifth in three years. Popular local restaurants have taken over the concessions in the terminal as part of the buy local effort. "We're tearing down the walls in this community to leverage our assets and make it work."

Achieving net zero in transportation is thornier than heating and power because there are few big users to focus on and only a handful of users have invested in all-electric vehicles. "There's the range anxiety with electric vehicles—can I go far enough?—so having enough well-placed charging stations is really helpful," says Lunderville of Burlington Electric, which has deployed 10 multiple-outlet charging stations at strategic locations around the city—parking garages, city hall, the co-op grocery store and the University of Vermont campus—and plans to add five to six annually. They're looking at a pilot project for city buses, while Mayor Weinberger's office just released a detailed plan for greatly expanding the bike path network with protected lanes. "The stats show the existence of protected lanes increases usage by 300 to 500 percent because there are a whole lot of people who don't feel safe co-mingled with vehicles," says Weinberger, who was inspired by a biking weekend in Montreal, which has such a system. "Seeing what they've done convinced me of the value of a more systematic approach."

Burlington Electric is preparing for a challenge of its own: Its grid is expected to shift from a "hub-and-spoke" system of power plants and consumers to a distributed network with thousands of tiny producers and storage sites. "The changes are being driven by the customers, who didn't use to have the option to do their own solar panels or start storing their energy with a Tesla battery pack"—a home battery system that allows users to bank electricity, says Lunderville. He envisions creating a system by which the utility could pay customers to store energy for the network at times when they don't need it banked themselves. To do that requires the grid to collect and process a lot more data to coordinate the cacophony of demands, supplies and storage opportunities. "Suddenly we need to know a lot more about how power is being generated and used than you do today."

The industry expects these changes everywhere, but Burlington is likely to see them early—because of its green ethos and because Vermont offers a variety of incentives for customers to invest in solar. But it's also the perfect sandbox—a small city that owns its own grid, power generation and public fiber-optic data network—and the utility is ready to pioneer the development of the technology and policies to make it all work. "Having the fiber optics in place is really critical to moving toward this bi-directional energy grid," says energy consultant Gabrielle Stebbins, who previously headed the state's renewable energy industry association. "We're a small state and city, so we're not driving the bus. But the little motor car we're driving can tell which roads are possible and feasible."

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## **America's First All-Renewable-Energy City** [Back](#)

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To understand what makes Burlington unlike almost any other city in America when it comes to the power it consumes, it helps to look inside the train that rolls into town every day. The 24 freight cars that pull up to the city's power plant aren't packed with Appalachian coal or Canadian fuel oil but wood. Each day 1,800 tons of pine and timber slash, sustainably harvested within a 60-mile radius and ground into wood chips, is fed into the roaring furnaces of the McNeil Generating Station, pumping out nearly half of the city's electricity needs.

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How did this former logging port on the shore of Lake Champlain transform itself over the past 40 years from a torpid manufacturing town in the far corner of a backwater state to a global trendsetter in sustainable development and green power? The answer carries particular resonance at a time when the United States' commitment to environmental issues and addressing climate change is suddenly less certain than at any time in a decade. Cities like Burlington, the largest city in a state whose tourism and agriculture dependent economy is vulnerable to climate change, have had to craft their own solutions to address global warming and to insulate themselves from the vagaries of global energy markets. In Burlington, however, these solutions were not spearheaded by civic or corporate leaders, as is now often the case when cities tackle urban issues. Instead, Burlington is achieving its energy independence almost entirely through initiatives developed by its municipal government—a government that has been decidedly left-leaning for decades. In fact, one of the people most responsible for setting in motion the chain of policies and programs that now distinguish Burlington was a ground-breaking social democratic mayor with unruly hair, a thick Brooklyn accent and a message that would many years later carry him deep into the 2016 presidential campaign.

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staffer who moved to Burlington from New York in 1973 and would later run the department. "We asked the community what they wanted and then we gave it to them."

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Self-sufficiency and environmental protection were key goals, and the Sanders administration came into office with a head start. Under Paquette, the city-owned Burlington Electric Department decided to replace its aging coal-fired power plant on the lakefront with a wood-fired one in the Intervale, a neglected stretch of Winooski River floodplain where the last dairy farmer was surrounded by junkyards. Completed during Sanders' first term, the McNeil biomass plant could use local wood to generate nearly all of the city's needs (though half the power—then and now—is owned by the plant's minority stakeholders and winds up in other towns.) The Burlington Environmental Alliance opposed it with pen-and-ink posters of a clear-cut landscape under the words "The Wood Chip Plant is Coming." But the plant opened with a staff of full-time foresters charged with developing green rules and protocols for their suppliers. "To this day there are no sustainable harvesting standards in the State of Vermont except for ours," says Burlington Electric's chief forester Betsy Lesnikoski, who has been monitoring harvests at the plant for 33 years. "We invented the wheel."

The city's development office pushed forward on multiple fronts, helping establish a non-profit corporation that promoted energy savings in the city's public and commercial buildings; bike paths along the previously inaccessible waterfront to reduce automobile use; curbside recycling pick-up well ahead of its time; and restoring buildings as business incubators.

"A lot of communities are 'whale hunters,' they think the answer is to business recruitment is to go after the big fish," Seifer says. "Instead we created a loan fund and helped local businesses and non-profits get started, places that would reinvest their time and effort locally, hire from within, serve on boards, and when times are tough not move out of state because they live here." Ironically, much of the money supporting many of these 1980s initiatives came via federal grants awarded under Ronald Reagan's administration.

One day in 1987, an idealistic entrepreneur called on City Hall. Will Raap moved to Burlington from the San Francisco Bay area the week Sanders had been elected and had spent the previous six years building Gardener's Supply, which sold people the things they needed to grow their own food at home. While planting vegetables at his plot in the city-owned community gardens in the Intervale, Raap discovered how remarkable the floodplain soil was and decided to move his business to an abandoned pig slaughterhouse across the road from the new McNeil power station.

"I'd asked myself: Could we be a big catalyst for food being grown in farms in Burlington for Burlington?" recalls Raap, whose company began testing various crops outside their new digs. "There was no demand for local food then—you could grow it but you couldn't sell it—so the question was how could you create a hub that could take this abused land and put it in production to educate and support the next generation of farmers while simultaneously building a market place?" That, he told Sanders's officials, required a partnership with the city. "We gave Bernie three choices: use waste heat from McNeil to heat 100 acres of greenhouses; start a market garden and see if it makes sense financially; or help us make 100,000 tons of compost to restore fertility to the valley," he recalls. "Bernie chose the third one and gave us a \$7,000 loan." Tens of thousands of tons of yard and leaf waste started flowing to Intervale fields instead of the landfill.

Two decades on, the non-profit Raap set up presides over 350 acres of reclaimed agricultural land that's home to a dozen farms, from established growers to novice farmers taking advantage

of low-rent farm "incubator" land. There's the community gardens, a 600-member community-supported agriculture operation (the kind where you buy shares and get weekly boxes of harvested food in exchange), a nursery for growing riverfront buffer trees, and the Intervale Food Hub, where boxes are loaded for delivery to people at their place of work or to 150 families identified by social service agencies as being in need. Together they produce \$1.3 million in foodstuffs for the Burlington market annually and provide 30,000 pounds of fresh food to families in need. "If we're going to make the world a better place, if you can get food right, then you can get the environment and economic development and human health right," says executive director Travis Marcotte, who grew up on a dairy farm a few miles south of the city. "Burlington would be very different if we hadn't had this here, creating opportunity and familiarity with sustainable agriculture."

Sanders stepped down in 1989 to run for Congress, and voters replaced him with the development office's head, Peter Clavelle. A native and former city manager of the neighboring mill-town of Winooski, Clavelle's administration would push the sustainability drive to a new level. In his first term the city instituted mandatory recycling, fought off big box stores at a proposed mall, and got an \$11.2-million bond passed to pay for insulation and other energy efficiency improvements in homes, businesses and public buildings. This initiative prevented the need to buy power from Hydro Quebec, whose dams were controversial because they flooded tribal lands in Quebec's far north, all with public support. "The beautiful thing is that we do as a general rule see the common good as a fundamental component of life here," observes Jennifer Green, the city's sustainability coordinator. "We all have to give a little for everybody to get some."

But Clavelle got ahead of the electorate on another front—extending benefits to the domestic partners of city employees—and it cost him. "Today it's hard to imagine it was an issue, but in 1993 it was," he recalls. Conservatives turned out to vote in huge numbers; Clavelle's coalition complacently stayed home. "So I lost an election and at the time I said, 'I'm done with politics, I'm done with Burlington.' I packed up my family, and we moved away for a voter-inspired sabbatical," he says. They ended up on Grenada, the Caribbean island nation with a comparable surface area and population to metropolitan Burlington. "When you're on an island, you really see what practices are sustainable and what practices aren't," he says, recalling ships unloading frozen chicken and orange juice while island chickens had little access to the market and citrus fruit rotted in the groves. "That was a transformational moment for me."

He returned to Burlington, got re-elected in 1995, and oversaw the process of developing the Legacy Plan, a citizen-sourced vision for how Burlington could become a sustainable community. "What is sustainable development? Is it the most overused buzzword of the 1990s or is it the most important concept for the survival of our planet and our communities," he says. "I decided a long time ago that it's both, and that we need to go beyond the branding and rhetoric and create actual examples that will resonate and make a difference in people's lives." The plan, completed in 2000, created the guiding vision that has been followed since: integrating local business development and farm-to-table efforts, putting New Urbanist solutions ahead of sprawl and prioritizing multi-modal transport over highways. The plan also had a major environmental component that emphasized recycling, energy conservation and investment in non-polluting transportation and renewable power. "This was the visionary document," says Green, who was hired to implement it. "It got the big city departments all focused on taking this on."

And without even quite noticing itself, the city built its way toward a sustainability milestone that would turn heads worldwide.

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Jon Clark has one of the more unusual offices in town. The exterior door is a gasketed bulkhead, the windows are the sort you'd find at a city aquarium and it's underwater for large periods of the spring, submerged by the roaring river falling over the dam barrier outside. Here, at computer terminals nestled above the dam's turbines, but two stories beneath the dam pond, Clark has monitored and maintained the 7.5-megawatt Winooski One hydroelectric plant since it was constructed in 1994. Visitors clamber down a long flight of metal stairs and through the foyer to the humming generator hall to reach the room, where Clark is often the only person on the scene. These days he can keep atop of the station's vitals with a smart phone app, and there's a guy who covers for him two nights a week and every other weekend. "I probably spend more time here than I do at home, so I treat it as such," Clark says. "I try to keep it as tidy as possible."

Tidy it is, and also financially effective. Built by private developers on Burlington-owned land in neighboring Winooski, the city exercised a onetime option to buy the facility in 2014 via a \$12-million voter-approved bond. The plant was, in a sense, free. The bond payments were about the same as the cost of the power the Burlington Electric Department would otherwise have had to purchase elsewhere. The cost of the power was now insulated from the fluctuations in oil and gas markets, prompting the Moody's credit agency to raise the utility's credit rating. And it made the city the first in the nation to obtain all of its power from renewable sources, a distinction that went almost unnoticed at the time, relegated to the third paragraph of the *Burlington Free Press's* story on the city finalizing the dam's purchase. "This was the product of a long term vision and a sequence of mayors," says Ricketts at the Gund Institute. "It kind of snuck up on us."

Indeed, because Burlington owns its own utility with its own citywide grid, the city could theoretically close its three connections with the wider world and generate all of its power combining McNeil, Winooski One, wind turbines and solar panels. This led a visiting writer for *Orion* magazine to declare this was where she would move to wait out a zombie apocalypse. This would only be an apocalyptic measure, as half of McNeil's power is actually owned by the plant's minority owners. Burlington makes up for this by buying hydro power from further afield, but it is still able to operate a renewable grid without asking rate payers to pay extra for it. "The conventional wisdom is that you have to pay more for renewables, but it's not true," says Burlington Electric's general manager, Neale Lunderville. "We haven't raised rates in eight years."

One of the reasons rates are low is that the city and its co-owners eight years ago invested \$11.5 million in a state-of-the-art air scrubber that qualified the plant to earn the highest value renewable energy credits. They're able to sell those to out-of-state utilities (who need to meet their standards but lack clean generating stations of their own) and then—to meet their own renewable standards—buy back cheaper credits to cover the power. The net profit—\$6 to \$9 million a year—is used to offset the rates Burlington Electric charges customers. "It's a terrific model for cities across the country," says Sandra Levine, senior attorney at the Conservation Law Foundation's Montpelier office. "With the challenges of climate change, we should be looking to our electricity sector to move away from fossil fuels and this is a good way to do it."

Current mayor Miro Weinberger, a Democrat elected in 2012, was inspired by the international attention Burlington has received since achieving the renewable energy milestone. "It's really pushed us to think hard and big about where we go from here," he says. "That's when we started looking at what net zero would look like."

A city is considered net zero when it generates as much energy as it consumes, not just in the form of electricity, but heat and transportation as well. Achieving such a state, Weinberger argues, would further insulate Burlington from the volatility of fossil fuel markets, saving money and luring more entrepreneurs and businesses with brands linked to sustainability, such as Ben &

Jerry's ice cream, green cleaning products maker Seventh Generation and climate change-conscious Burton Snowboards. "We've got our own goals around eliminating our carbon footprint completely, and being based in a city where that's easily possible is very important to us," says Joey Bergstein, general manager at Seventh Generation, which started in the early 1980s as an off-shoot of Gardener's Supply. "Our history here is very much driven by the fact that the city and the state of Vermont are so aligned with our values."

Proposals to use the waste steam from the McNeil plant to heat buildings and businesses have been kicking around for a quarter century, but ran against an economic obstacle. Building the distribution system is a big upfront cost, but attracting users from existing homes and buildings is a slow undertaking. What was needed was the equivalent of an anchor store at a mall, a big new user ready to buy lots of heat from day one, preferably downtown so that additional users could be easily patched in as their existing boilers reached replacement age. Now it looks like that's happening. On November 9, city voters approved a 14-story, multi-use development that will replace a dying indoor mall, that now cuts off several central streets, with a sidewalk-friendly restaurants and retail and market and affordable apartments.

At the city-owned airport, they've reduced demand for heat and electricity by replacing lighting and air conditioning systems and properly insulating the terminal's roof. There's a 500-kilowatt solar array that's been providing enough power to supply 60 homes and a rain garden on the roof of the parking garage. (A 10-megawatt wind farm from which the city draws power can be seen on a nearby ridge.) "We're a small airport and we don't have a lot of money, but what we try to do is to introduce a greener way whenever we change a bulb, replace a window, or repair our roof in a way that gives us a greater energy savings and return on our investment over time," says city aviation director Gene Richards, who cut electricity usage at the airport by a fifth in three years. Popular local restaurants have taken over the concessions in the terminal as part of the buy local effort. "We're tearing down the walls in this community to leverage our assets and make it work."

Achieving net zero in transportation is thornier than heating and power because there are few big users to focus on and only a handful of users have invested in all-electric vehicles. "There's the range anxiety with electric vehicles—can I go far enough?—so having enough well-placed charging stations is really helpful," says Lunderville of Burlington Electric, which has deployed 10 multiple-outlet charging stations at strategic locations around the city—parking garages, city hall, the co-op grocery store and the University of Vermont campus—and plans to add five to six annually. They're looking at a pilot project for city buses, while Mayor Weinberger's office just released a detailed plan for greatly expanding the bike path network with protected lanes. "The stats show the existence of protected lanes increases usage by 300 to 500 percent because there are a whole lot of people who don't feel safe co-mingled with vehicles," says Weinberger, who was inspired by a biking weekend in Montreal, which has such a system. "Seeing what they've done convinced me of the value of a more systematic approach."

Burlington Electric is preparing for a challenge of its own: Its grid is expected to shift from a "hub-and-spoke" system of power plants and consumers to a distributed network with thousands of tiny producers and storage sites. "The changes are being driven by the customers, who didn't use to have the option to do their own solar panels or start storing their energy with a Tesla battery pack"—a home battery system that allows users to bank electricity, says Lunderville. He envisions creating a system by which the utility could pay customers to store energy for the network at times when they don't need it banked themselves. To do that requires the grid to collect and process a lot more data to coordinate the cacophony of demands, supplies and storage opportunities. "Suddenly we need to know a lot more about how power is being generated and used than you do today."

The industry expects these changes everywhere, but Burlington is likely to see them early—because of its green ethos and because Vermont offers a variety of incentives for customers to invest in solar. But it's also the perfect sandbox—a small city that owns its own grid, power generation and public fiber-optic data network— and the utility is ready to pioneer the development of the technology and policies to make it all work. "Having the fiber optics in place is really critical to moving toward this bi-directional energy grid," says energy consultant Gabrielle Stebbins, who previously headed the state's renewable energy industry association. "We're a small state and city, so we're not driving the bus. But the little motor car we're driving can tell which roads are possible and feasible."

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## **Shareholders approve Tesla, SolarCity merger [Back](#)**

By Esther Whieldon | 11/17/2016 04:33 PM EDT

Shareholders of electric vehicle maker Tesla and rooftop solar company SolarCity today approved the companies' proposed merger.

Tesla CEO Elon Musk, who is also the chairman of SolarCity, is planning to combine the companies and offer an all-in-one home electricity supply and storage package. The deal also could help [ease](#) SolarCity's dependence on state-level net metering programs that are coming under attack across the country.

Excluding the votes of Musk and other shareholders who had an affiliation with SolarCity, more than 85 percent of shares were cast in favor of the corporate marriage, Tesla said. The companies expect to complete the transaction "in the coming days," Tesla said in a statement.

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## **Hoekstra, potential CIA pick, has long foreign, domestic lobbying resume [Back](#)**

By Benjamin Oreskes | 11/16/2016 12:05 PM EDT

Former Rep. Peter Hoekstra, a potential Donald Trump pick to run the Central Intelligence Agency, previously lobbied on behalf of the Kurdish regional government, a Belarusian potash company and a Libyan organization, as well as many major U.S.-based companies.

Vice President-elect Mike Pence took control of the Trump transition effort from New Jersey Gov. Chris Christie last Friday amid reports that he is purging the team of lobbyists to square with the campaign's theme of "draining the swamp" in Washington.

During the campaign, Trump said he would issue a "lifetime ban against senior executive branch officials lobbying on behalf of a foreign government." Still, he backtracked on his opposition to lobbyists in a "60 Minutes" interviews earlier this week.

Hoekstra, who chaired the House Intelligence Committee from 2004 to 2007, has been [floated](#) repeatedly over the past week as a potential CIA chief.

But his lobbying record is extensive; he worked as a lobbyist for Greenberg Traurig and Dickstein Shapiro after leaving Congress in 2011, and then struck out on his own this year.

The Michigan Republican, who served 18 years in the House and unsuccessfully pursued both the Michigan governorship and a Senate seat, currently heads Hoekstra Global Strategies, whose clients include Oregon-based manufacturer [Columbia Helicopters](#) and Michigan-based oil production outfit [Core Energy](#), according to lobbying disclosure reports. In 2016, his company reported \$68,500 in income from the two companies. In his work before that, at Greenberg Traurig and Dickstein Shapiro, Hoekstra [lobbied](#) on behalf of multiple domestic corporations, including coal giant Peabody Energy and tobacco company [Lorillard](#) Inc., as the latter [went](#) through a \$27.4 billion merger with Reynolds American.

And like Rudy Giuliani, whose bid to become Trump's Secretary of State has prompted scrutiny of his foreign lobbying work, Hoekstra has done plenty of work for foreign clients.

Hoekstra declined to comment on media speculation about a potential nomination - or how his lobbying history might affect his chances of getting a job in the Trump administration.

"Any characterization of what's going on and who they're bringing on, that's for the transition team to talk about and not for me," Hoekstra, who is in Washington today, told POLITICO in a brief phone interview.

"I've talked to the folks at the campaign," he said. "They're going through a very complicated process. I've been impressed with what they're doing."

Hoekstra served as Trump's Michigan co-chair and advisor on national security issues during the 2016 campaign. He also said that he [participated](#) in several briefings with Trump on Middle East issues and the threat from ISIS before the election.

"He learns very quickly and he behaves exactly the way I would see a CEO behave," Hoekstra said of Trump.

After leaving Congress in early 2013 he joined Dickstein Shapiro, and [then moved](#) in August 2014 to Greenberg Traurig, which also employed Giuliani. It's there that Hoekstra's foreign lobbying took off.

Hoekstra worked on raising the Kurdish Regional Government's profile on the Hill, meeting often with his former colleagues and their staffs. The Kurdish Regional Government is the semi-autonomous governing body of the predominately Kurdish northern part of Iraq. Their armed forces, known as the Peshmerga, have been instrumental in the retaking of Mosul and the larger fight against ISIS.

He [argued](#) in the pages of the National Review that the United States must provide the Kurdish security forces - known as the Peshmerga - with weapons to defeat ISIS.

"The United States needs to immediately provide it with more than light arms and artillery to tip the scales in their favor and overcome the firepower of the Islamists," he [wrote](#).

From April 2014 to October 2015, the firm received just over [\\$260,000](#) in payments from the Kurdish Regional Government, according to Justice Department records. (Hoekstra left Greenberg Traurig in August 2015.)

The Libya Institute for Advanced Studies, an organization that's [partnered](#) with the State Department to do educational workshops in the war-torn country, also enlisted Hoekstra's services at Greenberg Traurig's services in 2015.

His goal was to "strengthen a dialogue with Members of Congress, Administration Officials and other key leaders in the United States to communicate the foundation and its leadership's interests and policies for LIAS and issues related to the security and development of Libya," according to Justice Department records.

Just after he left Greenberg, Hoekstra [published](#) a book titled "Architects of Disaster: The Destruction of Libya about the Obama administration actions in Libya."

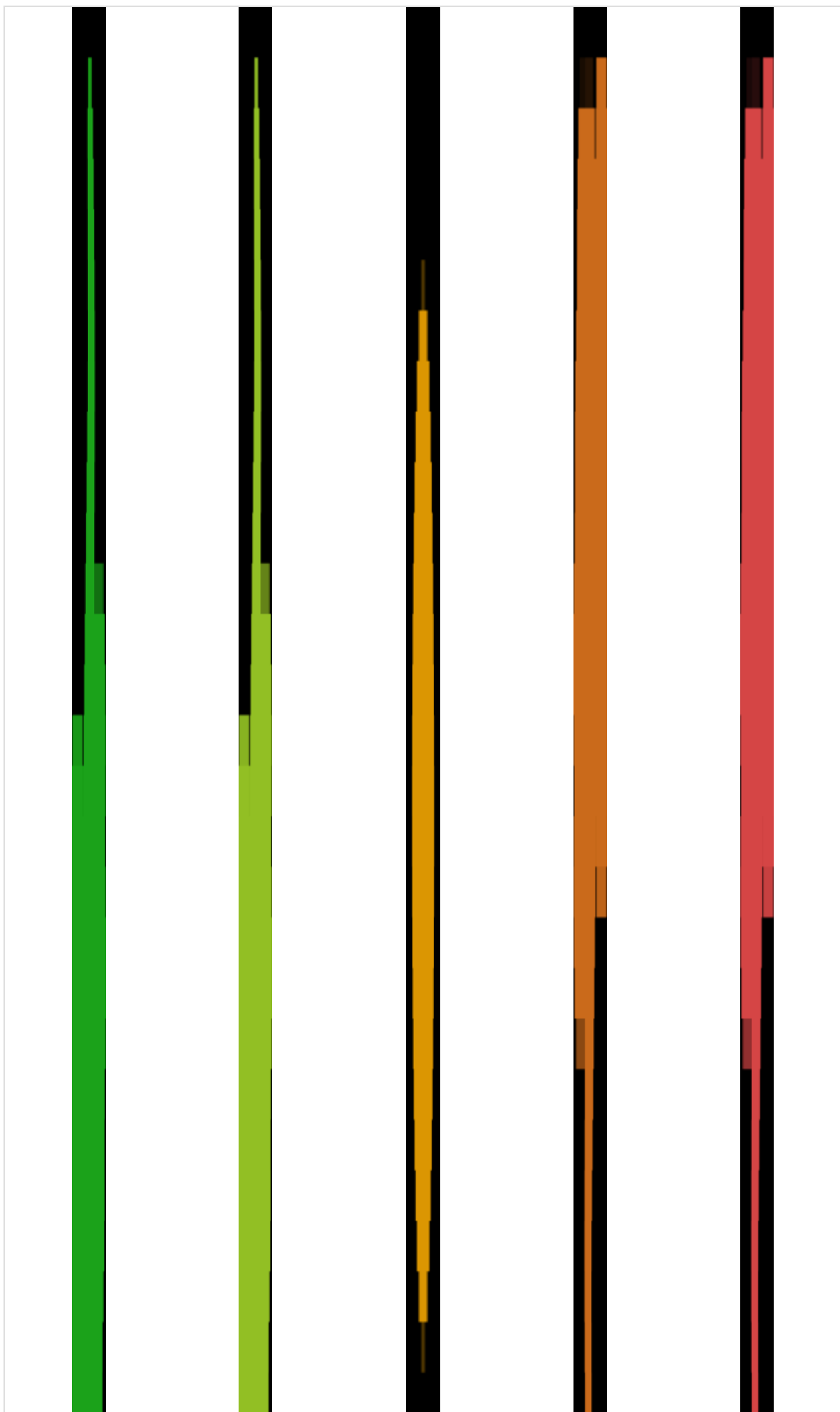
The work was roundly dismissed by White House officials. But the Heritage Foundation's James Carafano, who is working on the Trump foreign policy transition, [called](#) it "A graphic autopsy of what went wrong in Libya and why." Former GOP Nominee Mitt Romney said the book "cuts to the core in identifying how a radical Islamist agenda left to its own devices cannot reconcile with Western ideals of tolerance and acceptance."

Hoekstra also helped lobby on behalf of a Belarusian fertilizer company worried about the prospect of U.S. sanctions during his time with Greenberg Traurig. Rep. Dana Rohrabacher, a Trump supporter as well, [told POLITICO](#) earlier this year that he thought Hoekstra helped organize a meeting with half a dozen company officials when the California representative traveled to the country on a government-sponsored trip.

"We developed a very close and trusting relationship when he was in Congress and I always respected him," Rohrabacher said. "So when he recommended the meeting I, of course, took him up on the offer."

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Not really

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**From:** Bernhardt, David L.

**Sent:** Monday, November 21, 2016 9:21 AM

**To:** Smith, Ryan A.; 'drehberg@mercuryllc.com'; Dennis Cardoza; 'Johnny Amaral'; 'ckaren@sidley.com'

**Subject:** No team call today

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**From:** Bernhardt, David L.  
**Sent:** Thursday, December 1, 2016 5:00 PM  
**To:** 'Johnny Amaral'  
**Subject:** FYI

**FRIDAY, DECEMBER 2ND**

On Friday, the House will meet at 9:00 a.m. for legislative business. First and last votes are expected at 11:00 a.m. - 12:00 p.m.

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**From:** Johnny Amaral  
**Sent:** Friday, December 2, 2016 3:40 PM  
**To:** David Bernhardt  
**Subject:** fyi

Two of our board members had dinner this week with one of the partners at bhfs at the ACWA conference. Don't let me forget to talk to you about what he said to them the next time we talk

**From:** Bernhardt, David L.  
**Sent:** Friday, December 2, 2016 4:22 PM  
**To:** 'Johnny Amaral'  
**Subject:** RE: still on with Tom?

Ill call u in a minute

---

**From:** Johnny Amaral [mailto:jamaral@westlandswater.org]  
**Sent:** Friday, December 02, 2016 6:23 PM  
**To:** Bernhardt, David L.  
**Subject:** still on with Tom?

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**From:** Johnny Amaral

**Sent:** Friday, December 2, 2016 4:23 PM

**To:** David Bernhardt

**Subject:** still on with Tom?

**From:** Johnny Amaral  
**Sent:** Friday, December 2, 2016 4:25 PM  
**To:** 'Bernhardt, David L.'  
**Subject:** RE: still on with Tom?

Ok. Call 559- [REDACTED]

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**From:** Bernhardt, David L. [mailto:DBernhardt@BHFS.com]  
**Sent:** Friday, December 2, 2016 3:22 PM  
**To:** 'Johnny Amaral'  
**Subject:** RE: still on with Tom?

Ill call u in a minute

---

**From:** Johnny Amaral [<mailto:jamaral@westlandswater.org>]  
**Sent:** Friday, December 02, 2016 6:23 PM  
**To:** Bernhardt, David L.  
**Subject:** still on with Tom?

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**From:** Johnny Amaral  
**Sent:** Saturday, December 3, 2016 10:18 AM  
**To:** Ratekin, Anthony  
**CC:** Tom Birmingham; David L. Bernhardt  
**Subject:** Re: Today

Yes I am available. But we need to check David Bernhardt's availability as well. Tom?

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

> On Dec 3, 2016, at 9:06 AM, Ratekin, Anthony <Anthony.Ratekin@mail.house.gov> wrote:  
>  
> Do you have time to get on a call with Devin and me at 12:30?  
>  
> Anthony Ratekin  
> Chief of Staff  
> Rep. Devin Nunes

**From:** DCardoza@foley.com

**Sent:** Tuesday, December 6, 2016 4:49 AM

**To:** tbirmingham@westlandswater.org; Amaral Johnny; Peltier Jason; Bernhardt David Longly; Karen Catherine; Rehberg Denny; sostrowski@westlandswater.org; JThomas@foley.com; JWalsh@foley.com

**Subject:** Lead story today in Senate CQ

**Importance:** Low

Water, Water Everywhere  
By Niels Lesniewski, CQ Roll Call

California's two Democratic senators have long had a disagreement about how to address the water crisis in their state's Central Valley.

But like so many other issues, it just might come to a conclusion during this expected last week of Senate business for 2016.

House Majority Leader Kevin McCarthy<<http://www.cq.com/person/25162>>, R-Calif., recognized the efforts of Democratic Sen. Dianne Feinstein<<http://www.cq.com/person/80>> in coming to an agreement on the expected legislative vehicle for a water resources infrastructure bill (S 612<<http://www.cq.com/bill/114/S612>>). He said the deal would make more water available to communities that need it.

"Getting to this point has not been easy, but the collective commitment to provide relief to our state and local communities has proved resilient," McCarthy said. "This is an important moment for California, and the timing of this deal is critical — we cannot afford to miss capturing water from storms during this wet season."

[Story Photo]

Boxer (Bill Clark/CQ Roll Call)

Sen. Barbara Boxer<<http://www.cq.com/person/81>>, the ranking Democrat on the Environment and Public Works Committee that has jurisdiction over water resources development, was certainly not part of the deal. She said the changes have motivated her to try to block the bill when it arrives.

"This bill won't go anywhere in the Senate if I have anything to do with it, because it will result in the loss of thousands of fishery jobs, it will roll back the Endangered Species Act which was signed by President Nixon, and it will also take away power from Congress to approve new dams all over the country. The bill also fails to include strong Buy America requirements," Boxer said. "I will use every tool at my disposal to stop this last minute poison pill rider."

The bill is set for House floor consideration later this week as an amendment to an unrelated Senate bill, with Senate action expected to follow, assuming Boxer cannot rally the votes to block it.

During Tuesday's session, Sen. Dan Coats<<http://www.cq.com/person/721>>, R-Ind., will be honored in the Senate, with Majority Leader Mitch McConnell<<http://www.cq.com/person/202>> expected to make remarks before Coats gives what will actually be his second farewell to the chamber. Coats returned in 2011 after retiring once before (serving as ambassador to Germany and working in the private sector in between Senate stints).

Coats has been reported to be under consideration by President-elect Donald Trump for the director of national intelligence position.

After voting to limit debate Monday evening on the 21st Century Cures bill (HR 34<<http://www.cq.com/bill/114/HR34>>), the Senate will resume consideration of the health bill at 10 a.m.

from my iPhone

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**From:** Johnny Amaral  
**Sent:** Tuesday, December 6, 2016 7:32 AM  
**To:** Thomas Birmingham; David L. Bernhardt  
**Subject:** FYI

My flight out of Fresno is delayed due to excessive fog. They just boarded us and claim we're departing in 10 minutes.

I'm going to have to sprint to catch my connection in Salt lake. Which ought to provide a few laughs for other travelers watching my fat ass rumble through the airport.

But, I hope to make it. I will let you know as soon as I get onto a connecting flight.

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

**From:** Rojewski, Cole  
**Sent:** Tuesday, December 6, 2016 9:27 AM  
**To:** Bernhardt, David L. (DBernhardt@BHFS.com); tbirmingham@westlandswater.org  
**CC:** Dunklin, Kristina  
**Subject:** FW: First Word Alert: Senate Democrats May Have Votes Against Water

fyi

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**From:** Bloomberg Government [mailto:alerts@bgov.com]  
**Sent:** Tuesday, December 06, 2016 11:24 AM  
**To:** Rojewski, Cole  
**Subject:** First Word Alert: Senate Democrats May Have Votes Against Water Bill: Durbin

## Bloomberg GOVERNMENT

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### Senate Democrats May Have Votes Against Water Bill: Durbin

December 6, 2016 11:16AM ET | Bloomberg First Word

(Bloomberg) -- Democrats may have votes to sustain filibuster against water resources bill because of Sen. [Barbara Boxer](#)'s objection to the Calif. drought bill, Senate Democratic Whip [Dick Durbin](#) tells reporters.

- Drought provision of water projects bill, negotiated by McCarthy and Feinstein, "is very controversial within our caucus"
- Democrats "probably" have votes to block cloture
- "I haven't whipped it, but there's pretty strong sentiment opposed to, and I would say probably we do"
- Related: [Boxer to Use 'Every Tool' to Fight Drought Measure on Water Bill](#)

To contact the reporter on this story: Holly Rosenkrantz in Washington at [hrosenkrantz@bloomberg.net](mailto:hrosenkrantz@bloomberg.net) To contact the editor responsible for this story: Derek Wallbank at [dwallbank@bloomberg.net](mailto:dwallbank@bloomberg.net)

#### News Alert

#### BGOV Congress Tracker

Relevance: HIGH

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**From:** Johnny Amaral  
**Sent:** Tuesday, December 6, 2016 9:29 AM  
**To:** Thomas Birmingham; David L. Bernhardt  
**Subject:** Re: FYI

In case you're interested. I made it to my flight. And I looked ridiculous running thru the Salt lake airport.

It's fate...

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

> On Dec 6, 2016, at 7:32 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:  
>  
>  
> My flight out of Fresno is delayed due to excessive fog. They just boarded us and claim we're departing in 10 minutes.  
>  
> I'm going to have to sprint to catch my connection in Salt lake. Which ought to provide a few laughs for other travelers watching my fat ass rumble through the airport.  
>  
> But, I hope to make it. I will let you know as soon as I get onto a connecting flight.  
>  
>  
> Best,  
>  
> Johnny Amaral  
> Deputy General Manager - External Affairs  
> Westlands Water District  
>

**From:** Rojewski, Cole  
**Sent:** Tuesday, December 6, 2016 12:58 PM  
**To:** tbirmingham@westlandswater.org; Bernhardt, David L. (DBernhardt@BHFS.com)  
**Subject:** FW: Problems piling up for Senate's WRDA bill

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**From:** POLITICO Pro [<mailto:politicoemail@politicopro.com>]  
**Sent:** Tuesday, December 6, 2016 2:34 PM  
**Subject:** Problems piling up for Senate's WRDA bill

By Annie Snider

12/06/2016 02:14 PM EDT

Hurdles are piling up in the Senate for the Water Resources Development Act, with multiple lawmakers now vowing to hold up the measure over regional provisions and work threatening to bleed into the weekend.

"I think it's very unlikely that the votes are there," [Debbie Stabenow](#) (D-Mich.) told reporters this afternoon.

With [Barbara Boxer](#) vowing to hold up the measure over contentious California drought language, [John Cornyn](#), the chamber's No. 2 Republican, said consideration of the measure could carry into the weekend, but he is committed to staying in town if necessary.

EPW Chairman [Jim Inhofe](#) said it's unlikely House Republicans will agree to drop the drought language to smooth the path for the bill. "They say no, under any circumstances," he said.

Meanwhile, [Richard Shelby](#) (R-Ala.) is objecting to language over a water dispute between Alabama and Georgia. "We've got some problems, we'd hold it up," he told POLITICO.

Stabenow supports the WRDA bill for its authorization of aid for the beleaguered city of Flint, Mich., but said she won't lean on her colleagues to drop their objections. Instead, Michigan's senators said they are working on a back-up plan: getting the Flint authorization language added to the short-term funding bill Congress is preparing to take up.

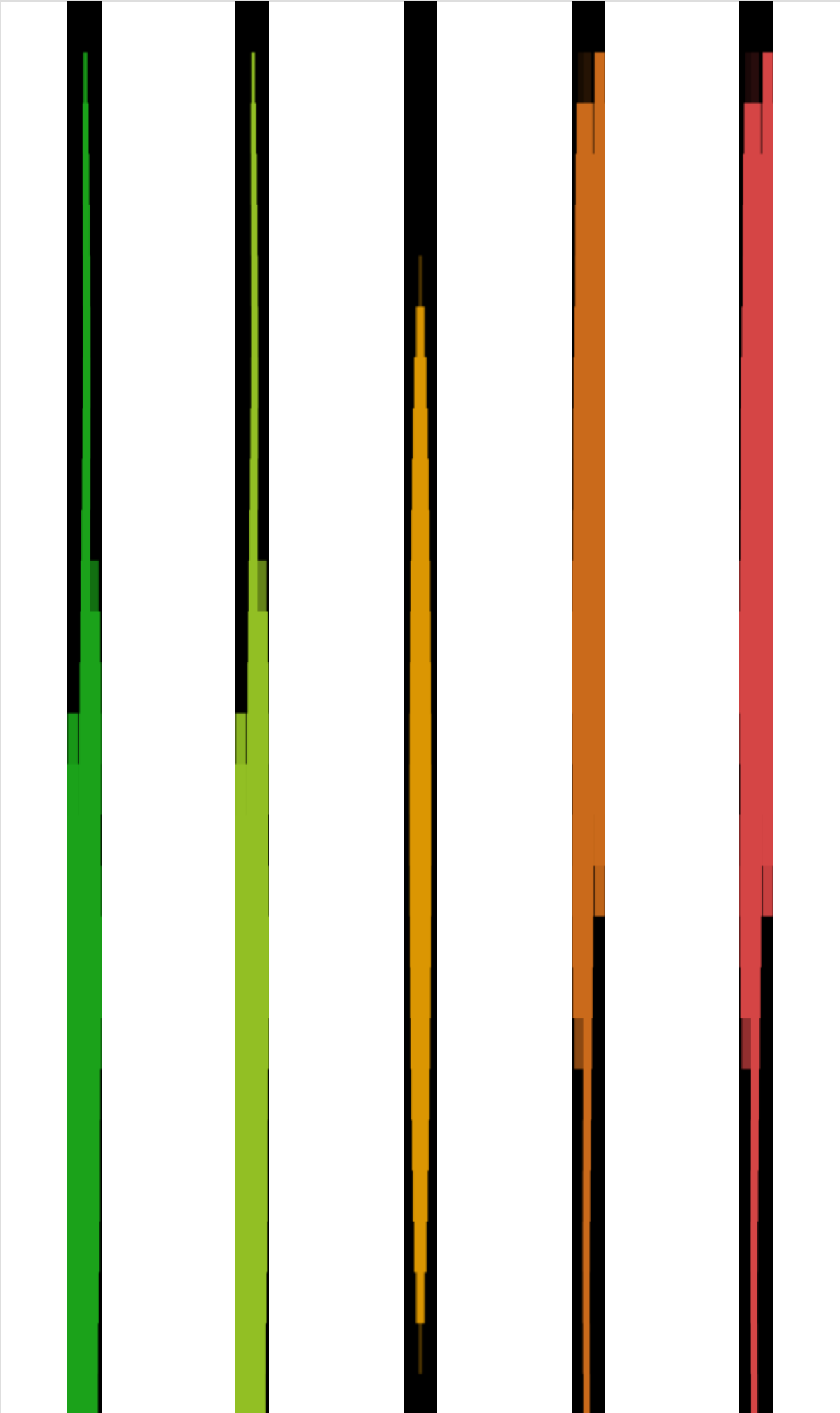
"WRDA has the authorization language, but if the CR has the authorization language, the CR by itself would be able to accomplish that, too. So we're covering all of our bases," [Gary Peters](#) (D-Mich.) said.

*Nick Juliano and Anthony Adragna contributed to this report.*

*To view online:*

<https://www.politicopro.com/transportation/whiteboard/2016/12/problems-piling-up-for-senates-wrda-bill-080658>

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Not at all

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**From:** Duck, Jennifer (Feinstein)  
**Sent:** Tuesday, December 6, 2016 4:20 PM  
**To:** Tom Birmingham; Watts, John (Feinstein)  
**CC:** 'Denny Rehberg'; 'David L. Bernhardt'; Michelle Ostrowski  
**Subject:** RE: Letter supporting drought language in WRDA

Thank you

---

**From:** Tom Birmingham [mailto:[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)]  
**Sent:** Tuesday, December 06, 2016 5:26 PM  
**To:** Watts, John (Feinstein) <[John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)>; Duck, Jennifer (Feinstein) <[J\\_Duck@feinstein.senate.gov](mailto:J_Duck@feinstein.senate.gov)>  
**Cc:** 'Denny Rehberg' <[DRehberg@mercuryllc.com](mailto:DRehberg@mercuryllc.com)>; 'David L. Bernhardt' <[dbernhardt@bhfs.com](mailto:dbernhardt@bhfs.com)>; Michelle Ostrowski <[mostrowski@westlandswater.org](mailto:mostrowski@westlandswater.org)>  
**Subject:** RE: Letter supporting drought language in WRDA

I am resending to ensure letter is attached.

---

**From:** Tom Birmingham [<mailto:tbirmingham@westlandswater.org>]  
**Sent:** Tuesday, December 6, 2016 2:23 PM  
**To:** 'Watts, John (Feinstein)' <[John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)>; 'Duck, Jennifer (Feinstein)' <[J\\_Duck@feinstein.senate.gov](mailto:J_Duck@feinstein.senate.gov)>  
**Cc:** 'Denny Rehberg' <[DRehberg@mercuryllc.com](mailto:DRehberg@mercuryllc.com)>; 'David L. Bernhardt' <[dbernhardt@bhfs.com](mailto:dbernhardt@bhfs.com)>; Michelle Ostrowski <[mostrowski@westlandswater.org](mailto:mostrowski@westlandswater.org)>  
**Subject:** Letter supporting drought language in WRDA

Jennifer and John,

I wanted to make sure you received this.

Tom

**From:** Dennis Nuxoll  
**Sent:** Wednesday, December 7, 2016 1:54 PM  
**To:** David Longly Bernhardt; Johnny Amaral  
**Subject:** Fwd: Stabenow whipping in support

Fyi

Sent from my iPhone

Begin forwarded message:

From: <dnuxoll@WGA.COM<<mailto:dnuxoll@WGA.COM>>>  
Date: December 7, 2016 at 12:39:34 PM PST  
To: Jennifer Duck <J\_Duck@feinstein.senate.gov<[mailto:J\\_Duck@feinstein.senate.gov](mailto:J_Duck@feinstein.senate.gov)>>  
Cc: john watts <John\_Watts@feinstein.senate.gov<[mailto:John\\_Watts@feinstein.senate.gov](mailto:John_Watts@feinstein.senate.gov)>>  
Subject: Stabenow whipping in support

I assume you guys are talking to her team, but as FYI I'm sending over talking points that stabenow can use to articulate why water language is important for CA ag.

- Dennis

Sent from my iPhone



**From:** Bernhardt, David L.

**Sent:** Friday, December 9, 2016 5:17 AM

**To:** Johnny Amaral

**Subject:** Fwd: Morning Energy, presented by Vet Voice Foundation: Water infrastructure, spending bills delayed in Senate — Imagining Pruitt's EPA — Rob Bishop's busy to-do list for 2017

David Bernhardt

Begin forwarded message:

**From:** POLITICO Pro Energy <[politicoemail@politicopro.com](mailto:politicoemail@politicopro.com)>

**Date:** December 9, 2016 at 5:47:57 AM EST

**To:** <[dbernhardt@BHFS.com](mailto:dbernhardt@BHFS.com)>

**Subject:** Morning Energy, presented by Vet Voice Foundation: Water infrastructure, spending bills delayed in Senate — Imagining Pruitt's EPA — Rob Bishop's busy to-do list for 2017

**Reply-To:** POLITICO subscriptions <[reply-fe8a1271716d027576-630326\\_HTML-637932022-1376319-0@politicoemail.com](mailto:reply-fe8a1271716d027576-630326_HTML-637932022-1376319-0@politicoemail.com)>

By Anthony Adragna | 12/09/2016 05:45 AM EDT

*With help from Nick Juliano, Elana Schor, Alex Guillén and Annie Snider*

**MINERS' BENEFITS PUSH SENATE INTO OVERTIME:** Senate Democrats keep threatening to delay final votes on water infrastructure legislation and a short-term government funding bill unless Republicans meet their demands for an extension of expiring benefits for coal miners. But the leaders of that cause — Sens. [Joe Manchin](#) of West Virginia and [Sherrod Brown](#) of Ohio — have precious little leverage after the House took its final votes Thursday and Senate Majority Leader [Mitch McConnell](#) set in motion votes to pass the bills. And that's not all: Democrats are also trying to amend the House-passed Water Infrastructure Improvements for the Nation Act (S. 612) to include permanent "Buy America" language.

"We are all in the same place on mine workers and all in the same place on the [water infrastructure] provision on Buy America," Brown told reporters Thursday night, referring to the Democratic caucus. But senior Republicans said earlier in the day that the time for negotiations had passed, and there wouldn't be any changes to the miners' benefits in the government funding bill: "I think that ship has sailed," Senate Majority Whip [John Cornyn](#) said. Senate Democrats could hold up final passage of the CR until Sunday using procedural tactics, though the government shuts down at 12:01 a.m. on Saturday.

**White House spokesman Josh Earnest** was sympathetic to Senate Democrats' efforts on the miners issue, but stopped well short of a veto threat Thursday, saying "we'll have to see whether or not that's something that Republicans in Congress can fix before they send the bill to the White House." And he offered Democrats little cover for holding up the water measure, making no mention of the California water wars and instead holding Republicans' feet to the fire not to leave town without "fulfilling their promise to the people of Flint" — a promise hinging on language in both the CR and the WRDA bill. ICYMI: Both measures passed the House on strong votes Wednesday, with only 63 Democrats ultimately defecting from the WRDA bill.

**Kildee urges passage for Flint:** While acknowledging the underlying legislation is imperfect, Michigan Rep. [Dan Kildee](#) urged his Senate Democratic colleagues to pass the bills so that the beleaguered city of Flint, Mich. could finally get funding to address its lead-tainted drinking water. "Obviously, there are parts of this legislation we don't like," he told reporters after the House vote. "[But] we can act in a way — voting on imperfect legislation — that says the people of Flint really matter." POLITICO's Burgess Everett, Seung Min Kim and Ben Weyl have the latest on the situation in the Senate [here](#).

**IT'S FRIDAY! THANK GOODNESS!** I'm your host Anthony Adragna, and the House science panel's Richard Yamada was the first to identify former Montana Sen. Mike Mansfield as the longest-serving party leader in history. Your end-of-the-week trivia: What was the most recent position to lose Cabinet-level status? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**ENVISIONING PRUITT'S EPA:** President Barack Obama relied heavily on his executive power and the EPA to help implement his climate change policies, but bypassing Congress means President-elect Donald Trump and his pick to run the EPA, Oklahoma Attorney General Scott Pruitt, can use the same type of executive action to turn back the clock on his environmental legacy, Pro's Andrew Restuccia and Alex Guillén [report](#). "It's the end of the EPA's climate agenda," conceded David Bookbinder, the Sierra Club's former chief climate counsel. "The Clean Power Plan is dead. Let's just forget it."

**Other efforts to undermine:** While the entirety of Pruitt's agenda is unclear, he could also chip away at the agency's efforts to slash carbon pollution from oil and gas operations, airplanes, cars and trucks. That fact leaves current and former Obama administration officials fearful that years of their work will be undone by the Pruitt EPA. "All the things that I've done in my life that I feel most professionally proud of are going to be blown up in one shape or form," one former senior administration official said.

**WHITMAN TO PRUITT: GIVE EPA A CHANCE:** ME caught up with the last Republican EPA administrator to follow a Democratic president: Christine Todd Whitman, who led the agency from 2001 to 2003. Whitman — a Clean Power Plan supporter — has a very different approach to regulating compared to Pruitt, who is involved in a number of ongoing lawsuits against the agency and who she said shouldn't have "a knee-jerk reaction of 'It's got to be wrong if it came from the agency.'"

**Does she have advice for Pruitt?** "Not any he'd listen to," she quipped. Still, Whitman offered: "Take a little time to get to know how the agency is constituted and how it's set up and what its real responsibilities are." He should also "remember that what he's in charge of now is the place where we protect human health and the environment. That's a huge responsibility and you need to take it seriously."

**RETHINKING MAJOR ENVIRONMENTAL LAWS:** As he ponders priorities for the 2017 Congress, House Natural Resources Chairman [Rob Bishop](#) told ME Thursday he thought major environmental laws — including the Endangered Species Act, National Environmental Policy Act, the Antiquities Act and Clean Water Act — all needed fundamental rethinking. But he acknowledged actually revamping them would be a "hard lift to do."

**On the Endangered Species Act,** Bishop said the law's focus was not on rehabilitating threatened species but gaining control of lands. "It has nothing to do with the damn species. The entire thing needs to be rethought," the Utah Republican said. And he added that NEPA has

strayed from its original intent and now is used primarily as a way to obstruct infrastructure projects. "You can't just tweak that, you can't just pass an executive order. There's got to be a major rethought of the process," he said.

**Tricky picking priorities:** Before heading to his final votes of this Congress, Bishop said he was working on ranking his priorities for next year, though he noted a final order would have to wait until all the political appointees were in place. He plans to pursue his public lands initiative, forest fire resiliency efforts, a broadened sportsmen's package and major changes to the Land and Water Conservation Fund, among other things.

**\*\* A message from Vet Voice Foundation:** Veterans and military families across the country consider it part of our patriotic duty to protect America's public lands. Together, we urge Congress to invest in and protect our public lands and parks as they would our roads, bridges and tunnels as they fulfill their promise to rebuild our American infrastructure.

[www.VetVoiceFoundation.org](http://www.VetVoiceFoundation.org) \*\*

**DEMOCRATS AMPLIFY WAR ON PRUITT:** Sen. [Ed Markey](#) told reporters Thursday that Democrats would make stopping Scott Pruitt's EPA nomination one of their top priorities, and they're predicting a stronger public outcry than has been seen in decades. "It will be showdown on every clean air, clean water, climate bill that has ever passed the House and Senate of the United States," Markey said. "It's a smorgasbord of bad Cabinet nominees that are being presented to the Senate, but again I would put the EPA right at the top of the list." He likened the selection of the Oklahoma attorney general to Ronald Reagan's picks of Anne Gorsuch Burford and Rita Lavelle for EPA, both of whom later resigned under pressure.

**Fears over U.S. leadership:** Installing Pruitt to lead EPA would weaken U.S. credibility internationally on a host of issues, Markey warned. "They will be saying that the United States is now preaching temperance from a bar stool," the Massachusetts Democrat said.

**HEITKAMP NOT SOLD ON TRUMP EPA NOMINEE:** Sen. [Heidi Heitkamp](#) (D-N.D.) met with Trump last week and remains in the running to join his Cabinet, but that doesn't mean she's prepared to fall in line as a yes. Pruitt is also a longtime critic of the federal ethanol mandate, which gives Heitkamp — who faces a tough reelection battle in 2018, if she stays in the Senate — some serious pause.

"I'm still learning about him, but I have serious concerns about his record of opposing the Renewable Fuel Standard, which is critical for farmers and jobs across North Dakota," Heitkamp said in a statement. "If we're going to have an EPA administrator who understands rural America, that means they also have to understand the needs of farmers and want to support those farmers."

**But finding the votes to stop Pruitt looks tough:** Sen. [Lindsey Graham](#), one of the few Republicans to acknowledge human activity is the primary driver of climate change, told reporters Thursday he was "inclined" to support Pruitt: "If I excluded everybody in the Republican Party that doesn't believe in climate change, I wouldn't have too many friends," he said. Democrats would need a handful of GOP defectors if they want to block of Pruitt's nomination.

**Debatable:** Rep. [Mike Quigley](#) invited Pruitt to debate the scientific basis of climate change in Chicago. "With science on my side, I invite [@AGScottPruitt](#) to Chicago to debate the existence of [#ClimateChange](#) & the reality of its man-made causes," he tweeted.

**'GUERRILLA WARFARE' IS THE NEW REGULAR ORDER:** Sens. [Lisa Murkowski](#) and [Maria Cantwell](#) grappled with what they see as the new way of legislating in a pair of floor speeches the pair delivered Thursday evening lamenting the death of their meticulously crafted energy bill as Congress prepares to end its year. Noting the two years of work they put in — starting with listening sessions, moving to hearings, then markups, then floor debate and finally a conference committee with the House — the senators were aghast that the bill collapsed inches away from the finish line as the House adjourned more than two weeks before Christmas. "We have done it by the book," Murkowski said, eliciting nods from the Senate pages when she noted the gulf between her and Cantwell's Schoolhouse Rock approach to legislating and what normally goes on in the Capitol. Perhaps, Murkowski added, this marks the end of "regular order" for good.

"I think what we were doing is extraordinary — it's not normal," Murkowski said, and instead, "guerilla warfare" is the way to get things done now. Cantwell, speaking just before Murkowski took the floor, complained that their broadly popular bill was left in the dustbin by House leadership, who took the "more outrageous" step of pushing through a water infrastructure bill into which they had "air dropped" a California drought provision at the very last minute.

**WHO WILL GET DOE NOD?** In the race for Energy secretary, it doesn't seem like Trump has finalized his pick, despite a flurry of reports. Today's Trump Tower meeting for Manchin, [who has been rumored for the job](#) since last week, has all the makings of an interview. Meanwhile, former Texas Gov. Rick Perry, who has been in the mix for some time and has made the pilgrimage to Trump's New York skyscraper, is now considered a leading candidate, as The Wall Street Journal [reports](#). And CBS [reports](#) that Ray Washburne, a member of Trump's finance team and a former finance director for Chris Christie, is "a top candidate" — but he's something of an unknown in D.C. policy circles. (He is, however, married to an heiress of the Hunt Oil fortune.) Rep. [Kevin Cramer](#) (R-N.D.), a Trump energy adviser, is also popular in the PE's inner circle but may be leaning toward staying in Congress (h/t POLITICO Transition).

**THAT WAS FAST:** Amid rumors that Rep. [Cathy McMorris Rodgers](#) will be named Interior secretary, a handful of House Republicans are quietly laying the groundwork to fill her current job of House GOP Conference chair, POLITICO's Rachael Bade and Kyle Cheney [report](#). Reps. [Mimi Walters](#) (R-Calif.), [Susan Brooks](#) (R-Ind.), [Mia Love](#) (R-Utah) and [Doug Collins](#) (R-Ga.) are exploring bids for the No. 4 position in House leadership .

**LOCKED OUT:** "The group of [Trump] loyalists who helped launch his campaign and powered its stunning early victories are growing worried they won't be getting plum jobs," POLITICO's Alex Isenstadt and Kenneth P. Vogel [report](#).

**REID'S FAREWELL WARNING ON YUCCA:** Many people believe the departure of Senate Minority Leader [Harry Reid](#) may allow the nuclear waste repository at Yucca Mountain to move forward, but the Nevada Democrat warned during his farewell address Thursday that it wouldn't be so easy. "They'd have to start all over again," Reid said. "You could probably get it going again now for \$10-12 billion. So if you have a way to pay for it, good luck."

**'No problem' with coal:** In between touting his efforts to expand renewable energy in Nevada and create new national parks, Reid asserted he had "no problem" with coal, while explaining his state's two remaining coal-fired plants would soon close. "I've helped fund clean coal technology," he said. "So I have nothing against coal."

**LIGHTER CLICK:** Trump's plan to revive the coal industry. [Cartoon](#).

## **MAIL CALL! ALASKA DELEGATION WARNS AGAINST DRILLING BAN:**

Republican Alaskan Sens. Lisa Murkowski and Dan Sullivan, as well as Rep. Don Young, sent President Obama a [letter](#) Thursday urging him not to pursue a permanent ban on fossil fuel drilling in the Arctic during his final days in office. "We instead encourage you to work with us — and to listen to and respect the voices of the Alaskan people — to chart a course allowing responsible development to proceed," they wrote.

**STAND STRONG, BOXER URGES:** With employees wary of what their world may look like under the Trump administration, outgoing Environment and Public Works Committee top Democrat [Barbara Boxer](#) sent the employees of EPA [a letter](#) thanking them for their efforts. "You must continue your important work that is rooted in science and never be afraid to do so," she wrote. "Although I am retiring from the Senate, I plan to keep fighting these fights — I will just be doing it from California."

**BEWARE THE MIGHTY OMB:** High-level political appointees continue to be confounded by the OMB's enormous influence, [according to](#) outgoing Agriculture Secretary Tom Vilsack. "Early in the administration I would get quite a rise out of people when I would say to them, 'I never thought I would meet God on Earth, but OMB is about as close to that as possible,'" he told Pro Agriculture's Helena Bottemiller Evich in a lengthy interview. "I never realized there was a department that had that much clout with not much statutory authority, and very few people. But they do." (h/t Budget and Appropriations Brief)

**TRIBAL GROUPS TESTIFY ON HUMAN RIGHTS:** A group of tribal representatives, including some from the Standing Rock Sioux currently battling the Dakota Access pipeline, will testify at a hearing by the Inter-American Commission on Human Rights today in Washington. They [petitioned](#) the commission on Dec. 2 to protect their rights during the pipeline protests.

**JEWELL IN NEW MEXICO:** Interior Secretary Sally Jewell will hike today in the Organ Mountains-Desert Peaks National Monument in Las Cruces, N.M., and then discuss "the economic importance of protecting public lands and national monuments" at a roundtable. The monument has seen a 102 percent increase in visitors since the Obama administration designated the monument in 2014, according to the Las Cruces Green Chamber of Commerce.

**HOW TO HELP COAL COMMUNITIES:** The Hamilton Project at the Brookings Institution released [a report](#) on Thursday urging the addition of a 20 percent royalty on the social cost of carbon for new and renewed federal coal leases. This would generate an additional \$3 billion annually that could be used to support transitioning coal communities.

## **QUICK HITS**

- City Report Seeks To Provide A Framework For Adapting To Climate Change. [WBUR](#).
- Canada to use economic levers to push Trump on climate change, says Dion. [CTV](#).
- Non-OPEC producers might not be scared enough to cut oil output. [CNBC](#).
- Companies on Climate: Trump or No, Still Cutting Emissions. [Wall Street Journal](#).
- Newtok to ask Obama for federal disaster declaration. [KTOO](#).
- Welcome to Beautiful Parkersburg, West Virginia. [Huffington Post](#).



## HAPPENING FRIDAY

9:00 a.m. — DOE's Office of Nuclear Energy holds a meeting of the Nuclear Energy Advisory Committee, Westin Crystal City, Arlington, Va.

## THAT'S ALL FOR ME!

**\*\* A message from Vet Voice Foundation:** Tens of thousands of service members and veterans rely on public lands to hunt, fish, camp and heal from the wounds of war. These lands are part of the American heritage we fought for. As a new President and Congress look to rebuild America's infrastructure, we call on them to make an equal investment in maintaining our public lands and parks for our service members and all Americans. Support for our veterans must extend to investing in and protecting America's natural heritage, for our children and grandchildren.

[www.VetVoiceFoundation.org](http://www.VetVoiceFoundation.org) \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2016/12/water-infrastructure-spending-bills-delayed-in-senate-020482>

## Stories from POLITICO Pro

### Democrats push government toward shutdown [Back](#)

By Burgess Everett, Seung Min Kim and Ben Weyl | 12/08/2016 06:41 PM EDT

Democrats are pushing the government to the brink of a shutdown, with coal country Senate Democrats leading a strategy to oppose a GOP spending bill if their demands aren't met for a longer extension of expiring health care benefits for coal miners.

Democratic Sens. Joe Manchin of West Virginia and Sherrod Brown of Ohio, who are both up for reelection in 2018 from states won by Donald Trump, are leading the charge to get a better deal from Republican leaders. And their push helped hardened resistance to the GOP throughout the rest of the 46-member Democratic caucus as the day went on. But Republicans say they will not renegotiate a four-month extension of coal miner health benefits and that Democrats have lost all leverage after the House passed the spending bill, 326-96, and then promptly left town.

Senate Majority Leader Mitch McConnell (R-Ky.) set in motion votes to pass the bill, leaving Democrats only procedural tactics to delay the measure through Friday's funding deadline — which would put Senate Democrats in line to be blamed for a potential government shutdown. Flanked by coal miners during a biting cold outdoor news conference on Thursday evening, Manchin insisted this is "not a shutdown issue" and maintained he has a "strong commitment" from his Democratic colleagues to stand firm and demand a yearlong health care extension.

"I just want to say to everybody here, we are going to win this fight. I can't predict the exact path, but we are going to win this fight because we're right," said Sen. Chuck Schumer of New York, the ascending Democratic leader. "We want to get these beautiful people their due, and we won't stop 'til we do."

Schumer and Senate Minority Leader Harry Reid (D-Nev.), met privately with Manchin and Democratic Sens. Heidi Heitkamp of North Dakota and Mark Warner of Virginia to hash out the matter on Thursday afternoon. This followed an hours-long Democratic caucus meeting that ginned up the party in opposition to the government funding measure — which did not include a

yearlong insurance extension for miners — and a water infrastructure bill that excluded "Buy America" provisions.

"A few months extension is not sufficient," Warner said after meeting with party leaders. He chuckled when asked whether he was comfortable with a shutdown. "The solution is pretty easy. It is for our Republican friends to get this fixed."

But after all those meetings, Democrats have not come up with a viable plan to achieve their goals or rule out a government shutdown. Their hope is that they can persuade the House to unanimously pass a bill with the health care extension in it, a long-shot plan that GOP leaders say is entirely implausible.

"The House can do things when they leave. Three people show up and they do it," Brown said in an interview. "That's a solution."

AshLee Strong, a spokeswoman for House Speaker Paul Ryan, said the time for negotiation is over.

"The House just took its last votes of the year," she said after the spending bill passed the House.

The Senate will hold a rare Friday session to try to work out a last minute deal and avert a shutdown.

Republicans said that despite their tactics, Democrats are going to be on the losing end of the fight. With the House slated to leave for the year on Thursday afternoon, it became impossible for the Senate to amend the spending legislation without hauling back House members later. And Senate Republicans said their members are increasingly irked by Brown and Manchin's fight.

"They're not going to get what they want. They ought to actually be grateful for what they got," said Sen. John Cornyn, the No. 2 Senate Republican. Manchin "can make life more difficult for everybody else and kill a lot of good legislation. It's not going to advance his issue."

"If Republicans want to shut it down, they will," shot back Sen. Tim Kaine (D-Va.). "We are all committed. We want to find health care for miners and widows for a year."

Republican aides argued that it was only through McConnell's advocacy for miners that the four-month health care extension is even in the bill. One senior Republican source said that the opportunity for negotiating further is "history" now that the House is gone.

On the line is health care coverage for more than 8,000 West Virginia miners and for thousands more in other Appalachian states. A Democratic aide said that even with the four-month extension miners will get cancellation notices in January.

So Democrats said it wasn't enough and that the GOP was turning its back on the working class voters who just elected Donald Trump. Heitkamp said that Democrats believe "there has been a renewed interest in these types of issues with the election of president-elect Trump."

"They totally gave the back of their hand to miners," Sen. Claire McCaskill (D-Mo.) told reporters. "Now, who's for the working people? Where is Donald Trump on miners? Crickets."

Heitkamp and McCaskill are also up for reelection in 2018 in states that Trump won resoundingly. Sen. Bob Casey of Pennsylvania, another state Trump won, has joined Manchin and Brown in objecting to routine procedural requests. On Wednesday evening, Brown objected to a resolution observing the Pearl Harbor anniversary.

Under Senate procedure, Manchin and Brown could hold up the spending bill until Sunday, though a blockade of that length would take efforts from more Democratic senators than just those two. The government shuts down at 12:01 a.m. on Saturday without congressional action. Cornyn said that Senate won't leave until it wraps up its work, which may mean weekend work and a Monday session.

Manchin's West Virginia colleague, Sen. Shelley Moore Capito, also said she will oppose the spending legislation. But the funding bill is likely to pass when it gets a vote, Republicans said.

"They don't have the votes," said Sen. John Thune (R-S.D.). "It's just a question of how much they want to drag it out. Right now, sounds like a lot."

Manchin is scheduled to go to Trump Tower on Friday morning, just hours before the Friday shutdown deadline, and according to news reports, he might be interviewing for a job in the Trump administration.

The moderate Democrat said he would "absolutely" cancel the meeting if the senatorial dispute continued.

"I'm supposed to go in the morning, so we'll see," Manchin said. "I'm sure people would understand [if I canceled]. I've got to be here and voting."

House Appropriations Chairman Hal Rogers assured reporters a government shutdown would not happen. Asked whether his committee would have to draft a three-day stopgap bill in case the Senate doesn't clear the continuing resolution by Friday night, he said. "That call will come from leadership. We'll be ready if that happens." Asked if he would be getting on a plane after the House's final votes this afternoon, he said, "No I'm not."

Further scrambling the situation, Democrats are trying to amend water infrastructure legislation passed by the House to include permanent "Buy America" language. The fights are becoming intertwined because the spending bill and water bill are the last two major pieces of legislation in Congress this year.

"We'll see how this unfolds. We haven't made a final decision" on whether to block those bills, said Senate Minority Whip Dick Durbin (D-Ill.).

The legislation, which would maintain current funding and policy for the government through April 28, must be passed by midnight Friday. Lawmakers are eager to get home and the bill, which House Republicans unveiled Tuesday night, is largely free of controversy. And as the last train leaving the station for the 114th Congress, the so-called continuing resolution is serving as a prime vehicle for other sought-after measures designed to appeal to members on both sides of the aisle.

*Elana Schor and Kaitlyn Burton contributed to this report.*

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## Obama's mighty EPA falls into Pruitt's hands [Back](#)

By Andrew Restuccia and Alex Guillén | 12/08/2016 08:37 PM EDT

President Barack Obama leaned hard on the Environmental Protection Agency to carry out his climate agenda, bypassing a Congress that had refused to act.

As a result, President-elect Donald Trump and Scott Pruitt will have sweeping power to turn back the clock.

Pruitt, Trump's choice for EPA administrator, is expected to begin attacking Obama's environmental legacy using courtroom drama, foot-dragging and an upending of how EPA treats the scientific consensus on climate change. But one key to his success will be the same heavy reliance on executive action that Obama employed so aggressively in his second term.

Republicans have long contended that Obama overstepped his powers, accusing him of misusing obscure provisions of laws such as the Clean Air Act to claim authority over wide swaths of the U.S. economy. But in effect, Obama has offered a perfect blueprint for Trump and Pruitt, who would have a much harder time undoing his legacy if the Democratic Congress had passed global warming legislation in 2009 or 2010.

Pruitt is expected to take especially quick aim at Obama's signature climate regulation, known as the Clean Power Plan, a suite of limits on power plants' greenhouse gas pollution that is awaiting a crucial ruling from a federal appellate court. Pruitt has been one of the leading challengers against that and other EPA regulations in his role as Oklahoma's attorney general.

"It's the end of the EPA's climate agenda," conceded David Bookbinder, the Sierra Club's former chief climate counsel. "The Clean Power Plan is dead. Let's just forget it."

Sen. [Mike Lee](#) (R-Utah) said EPA's critics should expect Pruitt to be an aggressive champion for their cause.

"As attorney general of Oklahoma, Scott Pruitt has spent years being ignored and pushed around by Washington," Lee told a gathering Thursday at the Heritage Foundation. "He knows the kind of dangerous bureaucratic mindset he's up against."

While the entirety of Pruitt's agenda is unclear, he could also chip away at the agency's efforts to slash carbon pollution from oil and gas operations, airplanes, cars and trucks.

Current and former Obama administration officials are still reeling over Trump's selection of Pruitt, worrying that years of work could be undone. "All the things that I've done in my life that I feel most professionally proud of are going to be blown up in one shape or form," one former senior administration official said.

Still, administration officials express few regrets over Obama's executive-action approach, even if it made his accomplishments more vulnerable to Trump's attacks. They said the Republican-controlled Congress could have killed a climate bill as well.

"Even if we passed climate legislation, it could go the same way that [Obama's health care law] is going," said Heather Zichal, Obama's former top energy and climate adviser. "Nothing is sacred when you have these kinds of people running the agencies."

Environmentalists promise to fight in court against any backsliding from Obama's agenda — but they also point to scientists' warnings that time is running short to forestall the most catastrophic damage from global warming. They said the harm from Pruitt's actions would be compounded if Trump pulls the U.S. out of last year's Paris climate agreement, giving other countries cover to follow suit.

"What you lose is the most precious quantity you have in the battle against climate change, which is time," said David Doniger, director of the climate program at the Natural Resources Defense Council. "We're deep into overtime already."

Pruitt would come to the job with a track record as one of the leading litigators against the agency in recent years. He has at least seven ongoing lawsuits against the agency, including cases involving its rules on power plants, smog-creating ozone and Clean Water Act protections for wetlands and waterways.

His stock in Trump World rose after several conversations with investor Carl Icahn, who played a central role in vetting Trump's EPA contenders. Icahn came away from the conversations believing that Pruitt is [open to changing](#) an obscure part of EPA's ethanol rule that the oil refinery-owning investor had been railing against for months.

Former EPA Administrator Christine Todd Whitman, who led the agency during President George W. Bush's first term, expressed deep skepticism about Pruitt's coming reign.

"I haven't seen a whole lot from him that indicates a real belief in the mission of the agency, since he's sued it on just about everything," she said. She added: "He seems to be skeptical of science, period."

Indeed, one target that has environmentalists worried is EPA's treatment of climate change science itself.

EPA issued a scientific conclusion in 2009 that greenhouse gases endanger public health and welfare, providing a necessary precursor for the agency's subsequent rules targeting carbon dioxide. But Trump has promised to review that so-called endangerment finding.

Both Trump and Pruitt have questioned the science on man-made climate change, which Trump famously [said](#) on Twitter had been "created by and for the Chinese in order to make U.S. manufacturing non-competitive." Pruitt maintains that significant disagreement exists among scientists over the cause and consequences of global warming, even though the vast majority of climate researchers say the consensus is overwhelming.

It's not clear that reversing EPA's scientific judgment would hold up in court, and even Republicans privately question whether challenging it is a wise political strategy. But litigation over the matter could take years, putting EPA climate action on the back-burner for some time.

Other ripe targets include regulations that are embroiled in court challenges, including the Clean Power Plan, which the D.C. Circuit Court of Appeals could rule on at any time. Regulations in earlier stages of their legal battles include greenhouse gas limits for new power plants, a "Waters of the United States" rule facing fierce attacks from the farming, oil and development industries, and a new standard for smog.

Pruitt could ask the courts to send those rules back to the agency for reworking. Obama used that strategy when he took office, opting not to defend several Bush administration environmental rules that were tied up in the courts and then working to undo them.

"I wouldn't be surprised if we saw something similar here," said Jeff Holmstead, a former Bush EPA official whom Trump's transition team had considered to lead the agency.

Pruitt would have an even easier time revising the regulations if the courts strike them down first. Then he could either change the agency's course or decide against regulating altogether.

Any changes to the regulations would require EPA to spend years wending through the typical rulemaking process, and most likely would face new lawsuits from supporters of the Obama versions — for example, from environmental groups or states like California or New York.

Pruitt would also play a major role in what happens to big-ticket regulations that are now in the works. Those include a review of car emissions standards for the 2022-25 model years, which EPA set four years ago with a final average target of 54.5 miles per gallon. The agency [proposed](#) keeping those goals unchanged last month, despite pleas from automakers to loosen them, but it has until April 2018 to make a final decision.

Other upcoming EPA actions include limits on carbon emissions from aircraft, [rules](#) to ensure that hard-rock miners and other industries can pay for environmental cleanups, and regularly scheduled reviews of key national air quality standards.

Some important Obama-era regulations are well beyond Pruitt's ability to roll back easily, however. Those include a first-term rule targeting pollution that drifts across state lines, an update to the standards for acid-rain-creating sulfur dioxide and a rule limiting cars' and trucks' air pollution through 2021. While Pruitt and other state attorneys general are still in court with EPA over a rule limiting mercury emissions from power plants, that rule has already taken total effect, forcing shutdowns of some of the nation's oldest, dirtiest coal plants.

More broadly, experts believe that the United States' emissions trajectory won't dramatically change in the short term, even if Pruitt abandons the Clean Power Plan. Market conditions are causing widespread switching in the power sector from carbon-heavy coal to natural gas — and federal tax credits paired with state-level policies will continue to encourage development of wind and solar energy.

Still, climate advocates can't help imagining an alternative universe in which a President Hillary Clinton had gotten to follow through on her pledges to build on Obama's climate agenda. Environmentalists had planned to press her to crack down on methane pollution from existing oil and gas operations, and perhaps on greenhouse gases from refineries and agriculture.

"There will be no further progress," Bookbinder said. "I think the real difference will not be between Obama and Trump, but between Trump and what Hillary Clinton would have done."

*Eric Wolff contributed to this report.*

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**Republicans jockey to replace McMorris Rodgers if she takes administration job** [Back](#)

A handful of House Republicans are quietly laying the groundwork to run for House GOP Conference chair amid rumors that the current holder of the job — Rep. [Cathy McMorris Rodgers](#) — will be named interior secretary, multiple sources told POLITICO.

Reps. [Mimi Walters](#) (R-Calif.), [Susan Brooks](#) (R-Ind.), [Mia Love](#) (R-Utah) and [Doug Collins](#) (R-Ga.) are exploring bids for the No. 4 position in House leadership currently filled by the Washington Republican. Some, including Walters, are already making phone calls to gauge support, the sources said.

"Should [McMorris Rodgers] be appointed to serve in the Administration, I will absolutely run for conference chair to build on the successes House Republicans have seen in the 114th Congress," Walters said in a statement for this story. "I am humbled by the support I have received in preliminary conversations, and I look forward to speaking with all the members of our Conference."

Collins, recently elected conference vice chairman, also confirmed his interest to POLITICO: "While I would consider the opportunity that comes with an open seat, I remain humbled by my recent and resounding election to Vice Chair of Conference and look forward to working with Republican leadership to serve every American."

A source familiar with the thinking of Brooks, the incoming House Ethics Committee Chair, confirmed to POLITICO she'd be interested in the post.

Love's spokesman Richard Piatt pushed back on the notion that Love was making calls to anyone but did not say if she was considering the post.

The early positioning comes as the rumor mill on Capitol Hill swirls that President-elect Donald Trump will pick McMorris Rodgers — the most senior female Republican in Congress — to run the Interior Department. Insiders predict that GOP leadership will be searching for another woman to replace her given the dearth of female Republican lawmakers in senior roles in Congress.

Walters, a 54-year-old affable freshman and former state senator, is a rising star in the conference. Love, 41, the ex-mayor of Saratoga Springs, was the first female Black Republican in Congress.

As a former federal prosecutor, who also made headlines for her astute questioning on the Benghazi investigative panel, 56-year-old Brooks is seen by her colleagues as sharp. She briefly ran for governor when Trump tapped then-Hoosier state Gov. Mike Pence as his running mate.

Collins, a 54-year-old former minister for the Air Force troops, just defeated Rep. [Bill Flores](#) for his current leadership position. If he runs for conference chair, his vice chair position would open.

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**Trump 'originals' say they're getting frozen out** [Back](#)

They've been with him from the beginning — when no one believed he could win, and when the Republican Party establishment wanted absolutely nothing to do with him.

But now, as President-elect Donald Trump builds out his administration, the group of loyalists who helped launch his campaign and powered its stunning early victories are growing worried they won't be getting plum jobs.

Many of them say they've heard nothing about their career prospects, and during furtive huddles, have been commiserating with each other about how they can't seem to get their calls to top Trump transition brass returned. Some are convinced that party establishment figures who've taken the reins of the transition are giving them short shrift.

Compounding their frustration is that a number of top posts are going to mainstream party figures who previously actively opposed Trump. The president-elect is seriously considering tapping Mitt Romney, a onetime leader of the Never-Trump movement, to be secretary of State. He has already made Todd Ricketts, whose family funded an anti-Trump super PAC during the primaries, deputy Commerce secretary. And on Thursday, Trump met with former Navy admiral James Stavridis, who had been vetted by Hillary Clinton as a possible vice presidential choice but now may end up in Trump's administration.

The concerns have become so intense that Karen Giorno, a Trump aide who oversaw his successful Florida campaign during the Republican primaries, recently had a telephone conversation with the president-elect in which she expressed concern that Trump loyalists wouldn't be getting White House roles. During the call, which was described by three sources, Giorino also said she was alarmed that his establishment-minded choice for White House chief of staff, outgoing Republican National Committee Chairman Reince Priebus, wouldn't support the early staffers who worked for him. (Neither Giorno nor a Trump spokesperson would comment.)

Transition officials say it's far too early for anyone to lose hope. At this juncture, the president-elect has announced only a few senior-ranking positions and has focused most of his time on filling high-level Cabinet posts. But the angst provides a window into the early machinations of a divided administration, one that was catapulted to victory by a ragtag group of conservative outsiders running against a party establishment but that now is being co-opted by that very establishment.

Roger Stone, a Republican strategist and longtime Trump friend, has given voice to the concerns. During a Wednesday appearance guest-hosting radio host Alex Jones' show, Stone said he visited Trump Tower this week and found "an armada of retreads from the old Republican Party, both the congressional wing of the party and the Romney-McCain-Bush burnouts who are trying to board this ship."

"I saw people and heard about people whose names I haven't heard in 25 to 30 years," he added. "These are people who did nothing whatsoever to elect Donald Trump and they're people who don't share Donald Trump's values. They disagree with him on trade, they disagree with him on monetary policy, they disagree with him on immigration. Yet, they seek glory and titles."

As it stands, a number of Trump originals, as they call themselves, have yet to be promised positions in the administration. That includes people like George Gigicos, Trump's director of advance, Michael Glassner, the former deputy campaign manager and Stuart Jolly, the former national field director. The staffers who led Trump's campaign in early primary states, like Matt Ciepielowski, Charles Munoz, and James Merrill, haven't been offered positions, either. Nor has

Mike Rubino, who oversaw Trump's campaign in several states, or Stephanie Milligan, who ran his Oklahoma campaign.

For some, it isn't for lack of trying. Jolly has had talks with people close to the transition, said sources briefed on the matter. But it's unclear if he's being considered for any coveted positions. Jolly declined to comment.

Some may do something else entirely. Alan Cobb, who was national director of coalitions, is working on the transition but has not been offered an administration job and instead is exploring a campaign for a soon-to-be-open congressional seat in Kansas.

There are even questions about the fates of Corey Lewandowski and Hope Hicks, two early Trump aides who have become household names. Lewandowski spent part of the week working out of Trump Tower. Hicks has frequently been at Trump's side during the transition, but other communications aides, namely Sean Spicer and Jason Miller, have taken up many of her duties.

In interviews, a handful of Trump originals, none of whom agreed to use their names, said they were deeply frustrated about the lack of clarity around their futures. Some said they had risked their careers working for Trump, having been warned by friends that they would never get another job in politics once he lost. Others said they felt cut of the loop and were struggling to get information about what's in store for them.

Most of the early campaign hires would never have been considered for the high-ranking jobs that are currently being allocated, and would be more qualified for lower-profile jobs that tend to get filled out later in the process.

But many Trump loyalists worry that no one is watching out for them, since they were brought in by Lewandowski and his allies. The campaign leadership turned over multiple times since those early days, giving them less connection to the folks who took Trump across the finish line.

Several say they feel alienated from the transition effort — especially from Priebus, an establishment figure who will be White House chief of staff. Priebus collided bitterly earlier this year with Lewandowski, who as Trump's first campaign manager hired many of the originals, and played a major role in his June firing.

While the originals fret, Priebus is moving aggressively to lock down top positions for his allies. Two Priebus lieutenants, Spicer and RNC chief of staff Katie Walsh, are expected to fill senior roles.

"Those people now have big jobs, while Corey Lewandowski, Alan Cobb, Karen Giorno and others are on the outside with their noses pressed against the glass," one early Trump campaign staffer grouched.

Those involved in the transition say they expect many of Trump's early aides to get plum jobs. It's possible, for example, that Gigicos, will be offered director of White House advance. He has overseen planning for Trump's appearance at Saturday's Army-Navy football game in Baltimore.

"Even most of the people closest to Trump have not been offered jobs," said one transition source. "I get that some of these people are concerned, but many of them have been told that they'll be taken care of. There has actually been an effort to keep them."

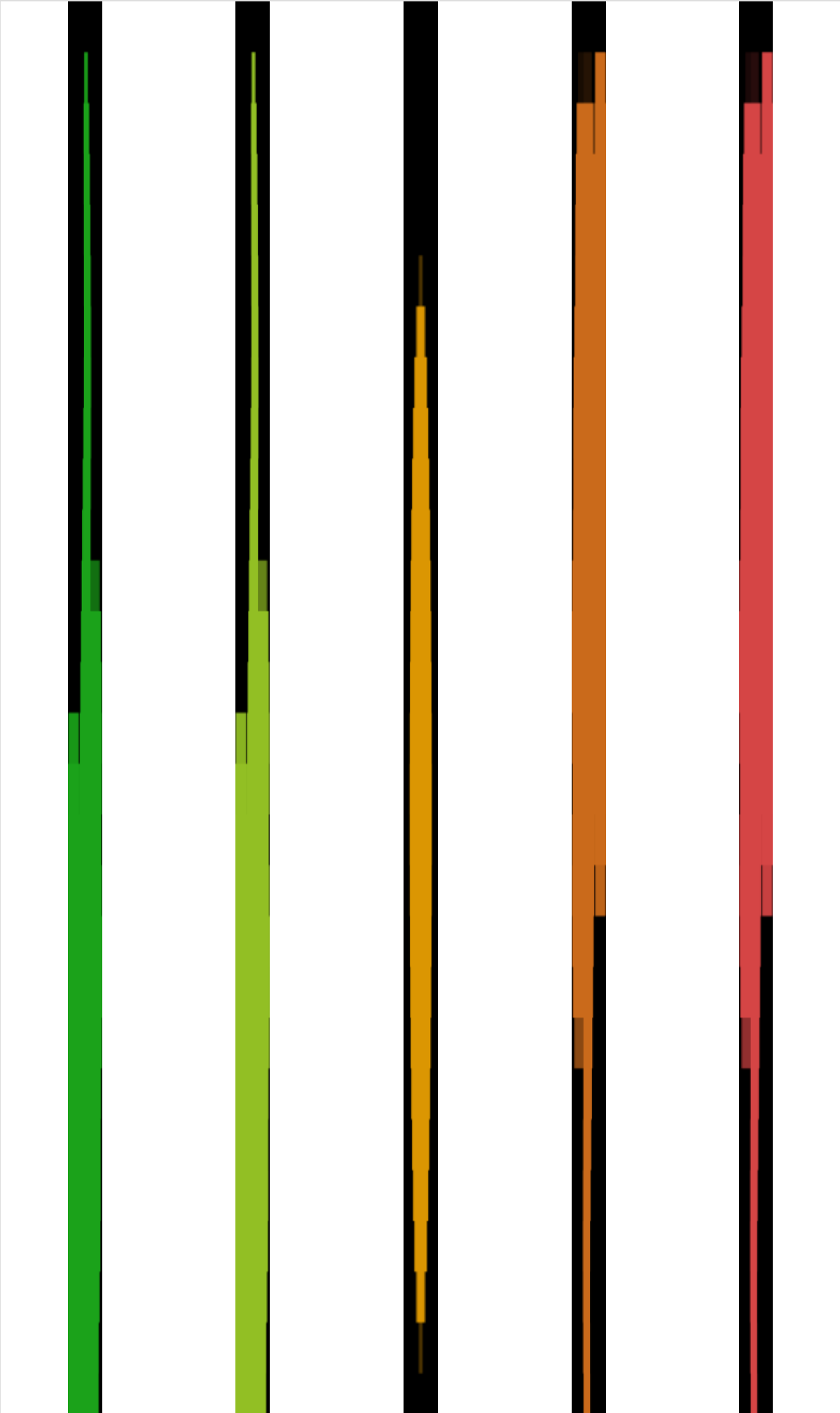
For some, the reassurance isn't enough.

"None of us are exactly Cabinet-level," said one staffer who is among those pining for a job, but so far hasn't been given any promises. "Most of us just want to do a good job and help the country, but apparently we don't play the game very well."

*Yousef Saba contributed to this report.*

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**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, December 14, 2016 1:47 PM  
**To:** 'Tom Birmingham'  
**Subject:** FW: confidential  
**Attachments:** MEMO - ESA consistency of CA water language.docx

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**From:** Watts, John (Feinstein)  
**Sent:** Wednesday, December 14, 2016 10:00 AM  
**To:** Bernhardt, David L. <DBernhardt@BHFS.com>  
**Subject:** confidential

# MEMO

**From:** The Office of Senator Dianne Feinstein  
**Date:** May 3, 2019  
**RE:** S. 2533 and its implications for the BiOps and ESA

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It is our view, a view supported by the Obama Administration, that S. 2533 is consistent with the ESA and the two biological opinions.

## **Executive Summary**

- The Administration has testified that the bill is consistent with the ESA and the biological opinions.
- The Administration reached this conclusion after the Departments of the Interior and Commerce worked with our office for over two years to carefully craft the bill's language on key issues.
- The biological opinions not only contemplate but in fact require the agencies to use adaptive management to consider adjustments to their implementation in light of real-time data, evolving science, and changing circumstances.
- By working closely with the Administration, we have provided three layers of protection so that adaptive management under the bill is consistent with the ESA and the biological opinions: 1) regulatory sideboards for agency experts to review any specific proposed action; 2) a careful limitation on the circumstances for which adaptive actions can even be proposed, specifically to situations where additional harm to listed fish species is unlikely; and 3) a clear savings clause that makes clear the primacy of the ESA and opinions.
- To ensure that any flexibility allowed under the bill is consistent with the ESA and the biological opinions, the Administration actually drafted the regulatory sideboards (language provided as a technical drafting service), referred to in the bill as the "environmental protection mandate".
- The environmental protection mandate flatly prohibits any action inconsistent with the ESA and the biological opinions.
- Put differently, the agencies retain their discretion—vested in them by virtue of the ESA—to verify and approve or deny any proposal that would cause harm to listed fish species inconsistent with the ESA or the analysis in the biological opinions.

- Moreover, the agencies can only consider adaptive management under the bill in scenarios where any benefits to water supply are likely to come with no harm, or minimal harm if any, and even in some cases benefit the listed fish species.
- For instance, the possibility of allowing more water transfers under the 1:1 inflow-to-export ratio could bring additional water into the Delta during the spring salmon migration when it could benefit fish as well as water supply.
- Due to the multiple layers of protection, the Bureau of Reclamation concluded that this bill would not have any detrimental impact on salmon.

#### **Administration's position**

After reviewing S. 2533, **the Obama Administration concluded “that the directives in this legislation are to be implemented in a manner consistent with the ESA and the current biological opinions for the State and federal projects.”<sup>1</sup>**

The Administration's position makes sense, given its extensive participation over the course of two years to ensure that the bill language would function within the ESA and the current biological opinions. In fact, the Administration drafted many of the provisions your memo criticizes. For instance, recognizing the importance of adaptive management, Interior and Commerce drafted the regulatory sideboards for adaptive management to ensure that the bill is implemented consistent with the ESA and the biological opinions.

#### **The biological opinions' emphasis on adaptive management**

The biological opinions were drafted to provide 30 years of regulatory compliance with the ESA. In upholding the opinions, the Ninth Circuit noted that the Fish and Wildlife Service's (FWS) “task of monitoring OMR [Old and Middle River] flow and smelt population is a daunting one,” given the complexity and uncertainties in the science.<sup>2</sup> The court further observed “that the FWS could have done more in determining OMR flow limits is uncontroverted,” since “[t]he OMR flow limit has a great practical significance, not merely to the Delta smelt but to

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<sup>1</sup> Statement of Estevan Lopez, Commissioner, Bureau of Reclamation before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources (May 17, 2016) (page 2). The Administration further testified that it “believe[s] that we are able to implement these directives in a manner that is consistent with the ESA and the biological opinions.” Id.

<sup>2</sup> San Luis & Delta-Mendota Water Auth. v. Jewell, 747 F.3d 581, 615 (9th Cir. 2014)

Californians, as it represents the ultimate limit on the amount of water available to sustain California's millions of urban and agricultural users.”<sup>3</sup>

Not surprisingly for such significant long-term documents drafted in the context of highly uncertain science, the biological opinions emphasize “adaptive management” provisions that give the agencies the flexibility to use updated science and monitoring within the limits of the ESA.

In fact, the salmon biological opinion requires that at the end of every year, “Reclamation and NMFS [NOAA Fisheries] shall host a workshop to review the prior years’ operations and to determine whether any measures prescribed in this RPA [Reasonable and Prudent Alternatives] shall be altered in light of information learned from prior years’ operations or research.”<sup>4</sup> Similarly, the smelt biological opinion emphasizes that “the use of an adaptive process with regulatory sideboards is essential,” and explains that “such a strategy would provide necessary protections [to the listed species] while utilizing the minimum possible regulatory constraints on the project.”<sup>5</sup>

#### **Administration-drafted language on adaptive management**

The environmental protection mandate included in S. 2533 prohibits the Secretary from taking any action “that would cause additional adverse effects on the listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the applicable biological opinion, using the best scientific and commercial data available.” These Administration-drafted regulatory sideboards are key to the bill’s utilization of adaptive management and ensure consistency between the actions authorized and the ESA and biological opinions.

Setting aside the Administration’s input on the standard in the environmental protection mandate (including from NOAA Fisheries and FWS), a reading of the standard itself makes clear its consistency with the ESA. Again, the standard prohibits the Secretary from taking any action that would cause effects outside those authorized by the biological opinion. Put differently, the agency can only take those actions that would cause effects within the range of those evaluated and authorized by the agency for the duration of the opinion (here, an analysis that projected

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<sup>3</sup> Id. at 607-08.

<sup>4</sup> See Salmonid Biological Opinion at 583.

<sup>5</sup> See Smelt Biological Opinion at 328.

species impacts over 30 years). This standard thus reflects the agencies' own understanding of the adaptive management flexibility allowed by the biological opinions that they themselves wrote.

The environmental protection mandate is nestled within the limitation of the effects anticipated to occur in the biological opinions. Therefore, the mandate does direct a consideration of all of the effects contemplated under the biological opinions, including: a) the direct and indirect effects of the project operations, b) the environmental baseline, and c) cumulative effects as defined by the implementing regulations for the ESA.

The mandate also explicitly directs the Secretary to consider the “effects” of any actions undertaken as a result of the act, a term of art defined by regulations as those actions that are “interrelated or interdependent” with the proposed action that will be added to the environmental baseline.<sup>6</sup> And the environmental baseline itself “includes the past and present impacts of all Federal, State, or private actions and other human activities,”<sup>7</sup> thereby preventing the very segregation of impacts as the memo contends would occur.

National Wildlife Federation v. National Marine Fisheries Service<sup>8</sup> only highlights the extent to which the standard here embraces the Ninth Circuit’s direction that agencies develop a “holistic” approach to its compliance with the ESA. Indeed, the approaches stand in stark contrast. The agencies in National Wildlife Federation chose to adopt a hypothetical “reference operation” framework for analysis in which the agency by its own admission wanted to entirely excluded a whole class of “nondiscretionary” operations from the requisite jeopardy analysis.<sup>9</sup>

That the standard here takes into account the diminished state of the species is also highlighted by National Wildlife Federation, in which the agency “impermissibly failed to incorporate degraded baseline conditions into its jeopardy analysis,”<sup>10</sup> conducting as a result “the bulk of its analysis in a vacuum.”<sup>11</sup> In contrast, S. 2533 directs the agencies to consider baseline conditions—in addition to direct, indirect, and cumulative effects—by ensuring the effects are limited to those that are contemplated by the biological opinions.

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<sup>6</sup> 40 CFR 402.02

<sup>7</sup> Id.

<sup>8</sup> 524 F.3d at 928-29.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 930.



Of note, during our collaboration with NMFS and FWS, those agencies believed they could comply with the ESA by assessing whether the proposed adaptive management would create additional adverse effects beyond those anticipated in the “full” jeopardy analysis already performed and contained in the biological opinions. If the adaptive action—fully considered in the context of the robust analysis already completed—would cause such adverse effects, the agencies may not proceed. The framework of this analysis is therefore fully consistent with the ESA, because it limits the effects on the species to the jeopardy analysis in the biological opinions, which has already been upheld by the Ninth Circuit.<sup>12</sup>

#### **Administration concurrence on specific instances of adaptive management in the bill**

Not only did Interior and Commerce draft the regulatory sideboards for adaptive management, they also worked closely with us to limit the circumstances under the bill where adaptive management could even be proposed. As a result, adaptive management may be considered only in situations where a case-specific analysis is likely to show water supply benefits without harm to listed fish. As Commissioner of Reclamation Estevan Lopez stated in his July 26, 2016 letter to Senator Feinstein, “[y]ou asked whether the Bureau of Reclamation could identify any ‘detrimental impact on salmon or other threatened or endangered fish species’ if S. 2533 is enacted. We have not found any indication of detrimental impacts to salmon in our reviews of the bill.”

#### **Water transfers**

There are several reasons that there is no conflict between water transfer language in S. 2533 and the salmon biological opinion.

Water transfers have long been recognized as an environmentally benign way to increase water supplies, because rather than dedicating more water to agricultural or urban use, they allocate water more efficiently to users who have a greater demand for it. Water transfers can help persuade farmers who grow low-value annual crops to fallow their lands during drought, and also can provide funding for senior water rights holders to install conservation technologies and transfer the saved water to junior users who greatly need it. In recognition of these benefits,

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<sup>12</sup> Of course, if the agencies arbitrarily and capriciously misapply the jeopardy analysis of the biological opinions in a specific instance, that can be challenged. But the issue here is whether the framework for the environmental protection mandate is consistent with the ESA as a general matter – and it requires consideration of all the relevant factors for jeopardy as the Ninth Circuit has affirmed exist in the smelt and salmonid biological opinions.

the Central Valley Project Improvement Act, the Miller-Bradley legislation to improve the environmental impact of the Central Valley Project, promoted the use of water transfers.

S. 2533 likewise promotes the use of water transfers by directing agencies to apply a 1:1 inflow-to-export (i/e) ratio for the increment of water moved through water transfers during the drought, if they can do so consistent with the environmental protection mandate.

First, there is no inconsistency with the salmon biological opinion if the agencies follow the proper process for the adaptive management reviews, which they are required to undertake each year under the terms of the biological opinion. The agencies can only vary the parameters of the inflow-to-export ratio after they first determine through these adaptive management reviews that doing so would not violate the environmental protection mandate.

Applying a 1:1 i/e ratio to water transfers would not require varying the terms of the salmon biological opinion at all, since the opinion is silent on the matter. Nowhere does the biological opinion say that the inflow to export ratio is intended to apply to the increment of water provided through water transfers. It simply does not address this point.

It also makes sense for flexibility within the i/e ratio for water transfers. During a drought, there is widespread agreement that it is paramount to increase the frequently low flow of the San Joaquin River during the April and May peak of the salmon migration when the i/e ratio is in effect.

Thus during a drought, there is good reason to allow transfers to proceed under a 1:1 i/e ratio to promote voluntary water sales that actually increase needed inflow into the Delta. Otherwise the water transfers would simply not occur if a higher i/e ratio were required and the purchasers of the transfer water would not get to use most of the water purchased because they had to leave it behind in the Delta. As a result, the application of a higher i/e ratio to water transfers could well have the perverse effect of eliminating the desired quantity of inflows that the i/e ratio is generally attempting to preserve from being pumped out of the Delta. In contrast, the 1:1 i/e ratio could encourage water transfers and thereby increase the critical inflows into the Delta that benefit salmon.

S. 2533's water transfer provision would avoid harm to listed salmon species for several other reasons. We included language at NRDC's request requiring that water transfers must result in additional river flows, greater than what would occur in the absence of the transfer. This means that the additional water will benefit both the communities that most need the water



and the environment.<sup>13</sup> Moreover, the transfers can only proceed if their environmental effects are consistent with all applicable environmental laws.<sup>14</sup>

Thus, in the case of water transfers:

- It is not clear whether any change in the parameters of the i/e ratio is required;
- If any change is necessary, the adaptive management process required by the salmon biological opinion must be followed before any change can be made;
- There is good reason to believe such a change could have a net environmental benefit by inducing more inflow into the Delta during the key spring salmon migration; and
- Under the environmental protection mandate, the agencies only will make the change if they decide that it is consistent with the ESA's regulatory sideboards and no harm beyond that permitted by the biological opinion would result.

### **Operation of the Delta Cross-Channel Gates**

Given the salmon biological opinion's requirement that the agencies implement it adaptively, it is hard to understand an objection to S. 2533's highly flexible adaptive management language on the Delta Cross-Channel Gates. Depending on a complex range of highly variable factors including salinity, water quality, the numbers of salmon smolts in the Delta, the frequently lesser numbers of migrating salmon during daylight hours, and the absolute and relative outflows on the Sacramento and the San Joaquin Rivers, the opening or closure of the Gates may or may not have adverse effects on water supply and quality, salinity, and salmon populations.

The pertinent language in S. 2533 was drafted as a technical drafting service by NOAA Fisheries to promote real-time management to address these numerous rapidly changing considerations. This provision creates a pilot program to test and evaluate different approaches to operating the Gates with no required outcome. The primary goal mentioned is to protect "out-migrating salmonids." NOAA Fisheries drafted this provision as a technical drafting service to require extensive monitoring and data collection to ensure that the pilot study only would proceed in a way that protects salmon among other purposes.

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<sup>13</sup> Section 302(b)(6)(C).

<sup>14</sup> Section 302(b)(6)(A)

The only way this flexible adaptive management language could be considered to violate the biological opinion would be if the opinion prescribed absolutely rigid and inflexible direction for all of its intended 30-year lifetime. To the contrary, the biological opinion not only permits but requires adaptive management.

### **Limits on Old and Middle River flows**

To be clear, S. 2533 does *not* authorize the agencies to briefly pump above -5000 cfs in Old and Middle Rivers during storm-related events. Pumping above -5000 is already authorized by the biological opinions, and it occurs with regularity,<sup>15</sup> because the biological opinions allow temporary pumping above -5000 cfs, so long as that level is not exceeded over a 14-day average.

As a result, the real question is not whether the agencies can increase pumping during winter storms, but whether they subsequently have to provide the “payback” necessary to avoid exceeding -5000 cfs over a 14-day average by subsequently reducing pumping well below -5000 cfs. For example, under current practice, if pumping increased to -6000 cfs for 7 days, it then has to decrease to an average of -4000 cfs for the next 7 days, and all the temporary gain in water supply would be lost.

During the 2014 and 2015 water years, the agencies did frequently increase pumping above -5000 cfs during winter storms, but they then had to reduce pumping well below -5000 cfs—even when there was no known biological risk to the species. This caused huge frustration to public water agencies that were trying to increase their meager water supplies in a drought by taking advantage of the temporary boon provided by winter storms.

The critical adaptive management language in S. 2533 is found in section 303(c): When exercising their authorities pursuant to drought contingency plans to capture peak flows pursuant to subsection (c), the Secretaries of the Interior and Commerce shall not count any day during that period toward the 5-day<sup>16</sup> or 14-day running averages of tidally filtered daily OMR flow requirements under the smelt biological opinion or the salmonid biological opinion unless doing so is required to avoid additional adverse effects on listed fish species beyond the range of effects anticipated to occur to the listed fish species for the duration of the biological opinions, using the best scientific and commercial data available.

This language relieves the agencies from arbitrarily requiring “payback” by reducing pumping below -5000 cfs unless there is an environmental reason to do so. In other words, if

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<sup>15</sup> See, e.g. <http://www.usbr.gov/mp/cvo/> (OMR flows tab)

<sup>16</sup> Besides the limit on pumping over 5000 cfs over a 14-day running average, the biological opinions limit pumping to -6250 cfs over a 5-day running average.

ESA-listed fish are near enough to the pumps, if there is a turbidity bridge drawing them to the pumps, or if there are other reasons that pumping should be limited to protect the fish, then the agencies will do so. But the agencies should not limit pumping for no reason other than that they had pumped at a high level some time before to take advantage of higher outflows.

On this issue—as with all others—we worked closely with the Administration to ensure that the adaptive management proposed by S. 2533 has a sound conceptual framework of potential water supply gains with little or no harm to the fish. Even then, Interior and Commerce retain the discretion, as ultimate scientific arbiters, to decide whether the facts of the particular instance bear out the logic of the conceptual framework.

We also worked closely with the Administration on the winter storms provision’s language and environmental protections. Significantly, this section does not require the agencies to increase pumping. Instead, it simply says that they “shall evaluate and may authorize” increased pumping.”<sup>17</sup> Furthermore, this section puts strong environmental limits on the agencies’ decisions to increase pumping. These include compliance with the adaptive management provisions of the biological opinions and the environmental protection mandate<sup>18</sup>; applicable state laws<sup>19</sup>; protections for smelt during the first flush of sediment<sup>20</sup>; and protections for salmon during spring migrations.<sup>21</sup>

**Written justification for restrictions on flows less negative than -5000 cfs**

Nor does S. 2533 violate the smelt biological opinion by requiring the agencies to provide a written justification whenever they require flows less negative than -5000 cfs. Put simply, the policy here is one of good governance and transparency.

We are frankly stumped by how this could violate the biological opinions or the ESA. The smelt biological opinion already requires the agencies to analyze carefully the proper pumping level within a range of -1250 cfs to -5000 cfs. Nothing in S. 2533 alters these basic operating parameters. In fact, the agencies are already analyzing the right pumping level carefully, so requiring them to provide a written justification hardly seems to violate the ESA,

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<sup>17</sup> Section 303(c).  
<sup>18</sup> Section 303(a).  
<sup>19</sup> Section 303(e)(1).  
<sup>20</sup> Section 303(e)(2).  
<sup>21</sup> Section 303(e)(3).

especially given that agency analysis and disclosure of the rationale for their actions is a hallmark of environmental law and good government.

This is not an overly onerous request, either. The bill makes clear that the agencies need only provide an explanation of such detail that is commensurate with the timeframe available.<sup>22</sup> In fact, this provision of S. 2533 complements section 2(c)(2) of the ESA, which requires that “Federal agencies shall cooperate with State and local agencies to resolve water resources issues in concert with conservation of endangered species.” Disclosing the rationale for reducing water supply to protect endangered species advances the agencies’ duty to cooperate with State and local agencies to resolve water resources issues in concert with endangered species conservation.

### **Savings language**

The argument that a savings clause—of the kind that is routinely included bills passed by Congress—may be rendered ineffective by more specific provisions of an act misses the mark. As a general matter, the Supreme Court has made clear that it will take its guidance from a “common-sense view” of the language of the savings clause itself.<sup>23</sup> And the language here is unmistakable and clear: Nothing in the Act “overrides, modifies, or amends the applicability of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the application of the smelt and salmonid biological opinions to the operation of the Central Valley Project or the State Water Project.”

In fact, the Supreme Court concluded that language in a savings clause worded almost identically to the clause in S. 2533 did, in fact, govern in the event of conflicts between the act and already-existing legal standards.<sup>24</sup> The statute there made clear that nothing in the act could be construed to “modify, impair, or supersede” the applicability of antitrust laws and any other federal, state, or local law. That reading led the Court to the logical conclusion that nothing in the act (much like S. 2533 here) could be read to alter already-existing standards (the analogue here would be the biological opinions and the ESA).

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<sup>22</sup> See Sec. 305: “In articulating the determinations and demonstrations required under this title and title I, the Secretaries of the Interior and Commerce shall . . . [use] such quantity of written supporting detail as is reasonable within the timeframe permitted for timely decisionmaking in response to changing conditions in the Delta.”

<sup>23</sup> Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 405-407 (2004)

<sup>24</sup> Id.

**From:** Johnny Amaral  
**Sent:** Thursday, December 15, 2016 12:19 PM  
**To:** Holly A. Noles  
**CC:** David L. Bernhardt  
**Subject:** Tuesday January 10th

Holly,

I just spoke with David and he suggested I connect with you about organizing a reception that Westlands wants to host at a restaurant or a venue on the hill for members and staff. It's a "thank you" event for their efforts this year.

The venue would need to be catered with heavy appetizers and a full bar.

David suggested Charlie Palmers in one of their private rooms. The room would have to accommodate no more than 30 people....I think.

Can you help with that?

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

**From:** Johnny Amaral

**Sent:** Monday, December 26, 2016 9:32 AM

**To:** Ryan A. ' 'Smith; Denny Rehberg; Dennis Cardoza; David Bernhardt; Catherine Karen

**Subject:** Reminder

No call today

Best,

Johnny Amaral

Deputy General Manager - External Affairs

Westlands Water District

**From:** Denny Rehberg  
**Sent:** Monday, December 26, 2016 10:16 AM  
**To:** Johnny Amaral  
**CC:** Ryan A. 'Smith; Dennis Cardoza; David Bernhardt; Catherine Karen  
**Subject:** Re: Reminder

Hope you all had a Merry Christmas!

Denny

.....  
**Mercury.**

**Denny Rehberg**

Co-Chairman

(US Congressman 2001-2013) 300 Tingey Street SE | Suite 202

Washington, DC | 20003

202.261.4000 office | [REDACTED] mobile

[www.mercuryllc.com](http://www.mercuryllc.com)

> On Dec 26, 2016, at 9:32 AM, Johnny Amaral <jamaral@westlandswater.org> wrote:

>

>

> No call today

>

> Best,

>

> Johnny Amaral

> Deputy General Manager - External Affairs

> Westlands Water District

>

>

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**From:** Dunklin, Kristina  
**Sent:** Monday, January 2, 2017 9:52 AM  
**To:** tbirmingham@westlandswater.org; 'Bernhardt, David L.'  
**Subject:** San Joaquin Repeal Language  
**Attachments:** San Joaquin Settlement Language.pdf

Hi Tom and David,

Hope you both had a great Christmas and New Year's Eve.

Wanted to get your take on the San Joaquin River Settlement language in H.R. 2898 (sec. 313) as replacement for the language in the draft bill sent in early December.

As a reminder, the Settlement language in 1837 made strong edits to the Settlement, but preserved some of the legislation for funding purposes.

In 2898, we included full repeal of the Settlement and included our warm water fishery language that stipulates a warm water fishery below Friant dam to satisfy CA fish and game code and the Settlement. This language is attached. We are planning on replacing the Settlement language with the language from 2898. Please let me know if there are any concerns from you guys.

Thanks,  
**Kristina Dunklin**  
Legislative Director  
Congressman David G. Valadao (CA-21)



24 **SEC. 313. SAN JOAQUIN RIVER SETTLEMENT.**

25 (a) CALIFORNIA STATE LAW SATISFIED BY WARM  
26 WATER FISHERY.—

HR 2898 RFS

64

1 (1) IN GENERAL.—Sections 5930 through 5948  
2 of the California Fish and Game Code, and all appli-  
3 cable Federal laws, including the San Joaquin River  
4 Restoration Settlement Act (Public Law 111–11)  
5 and the Stipulation of Settlement (Natural Re-  
6 sources Defense Council, et al. v. Kirk Rodgers, et  
7 al., Eastern District of California, No. Civ. S–88–  
8 1658–LKK/GGH), shall be satisfied by the existence  
9 of a warm water fishery in the San Joaquin River  
10 below Friant Dam, but upstream of Gravelly Ford.

11 (2) DEFINITION OF WARM WATER FISHERY.—  
12 For the purposes of this section, the term “warm  
13 water fishery” means a water system that has an  
14 environment suitable for species of fish other than  
15 salmon (including all subspecies) and trout (includ-  
16 ing all subspecies).

17 (b) REPEAL OF THE SAN JOAQUIN RIVER SETTLE-  
18 MENT.—As of the date of enactment of this section, the  
19 Secretary of the Interior shall cease any action to imple-  
20 ment the San Joaquin River Restoration Settlement Act  
21 (subtitle A of title X of Public Law 111–11) and the Stip-  
22 ulation of Settlement (Natural Resources Defense Council,  
23 et al. v. Kirk Rodgers, et al., Eastern District of Cali-  
24 fornia, No. Civ. S–88–1658 LKK/GGH).

**From:** Johnny Amaral

**Sent:** Monday, January 9, 2017 5:54 AM

**To:** Ryan A. 'Smith; Denny Rehberg; Dennis Cardoza; David Bernhardt; Catherine Karen; Ed Manning; Gayle Holman; Mike Burns; Carolyn Jensen; 'Heidi Pyle'

**Subject:** No calls today

I'm traveling to D.C. this morning. I apologize for the short notice

Best,

Johnny Amaral

Deputy General Manager - External Affairs

Westlands Water District

**From:** Emmerson, Catherine  
**Sent:** Monday, January 16, 2017 6:31 AM  
**To:** Johnny Amaral  
**CC:** 'Bernhardt, David L.'; 'Dennis Cardoza'; 'Denny Rehberg'  
**Subject:** Monday Call

Good Morning,

I can't be on the call this am. Will be en route with family from Deer Valley.  
Johnny, I will call as soon as I land.

Happy MLK Day all.  
Catherine

Sent with Good Work ([www.blackberry.com](http://www.blackberry.com))

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immediately.

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**From:** Bernhardt, David L.  
**Sent:** Monday, January 16, 2017 7:06 AM  
**To:** Emmerson, Catherine  
**CC:** Johnny Amaral; Dennis Cardoza; Denny Rehberg  
**Subject:** Re: Monday Call

Johnny: I will not be able to participate on a call today.

David Bernhardt

On Jan 16, 2017, at 8:30 AM, Emmerson, Catherine <[cemmerson@sidley.com](mailto:cemmerson@sidley.com)> wrote:

Good Morning,

I can't be on the call this am. Will be en route with family from Deer Valley.  
Johnny, I will call as soon as I land.

Happy MLK Day all.  
Catherine

Sent with Good Work ([www.blackberry.com](http://www.blackberry.com))

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**From:** Johnny Amaral  
**Sent:** Monday, January 16, 2017 7:17 AM  
**To:** Bernhardt, David L.  
**CC:** Emmerson, Catherine; Dennis Cardoza; Denny Rehberg  
**Subject:** Re: Monday Call

No worries. No call today

Best,

Johnny Amaral  
Deputy General Manager - External Affairs  
Westlands Water District

On Jan 16, 2017, at 6:06 AM, Bernhardt, David L. <[DBernhardt@BHFS.com](mailto:DBernhardt@BHFS.com)> wrote:

Johnny: I will not be able to participate on a call today.

David Bernhardt

On Jan 16, 2017, at 8:30 AM, Emmerson, Catherine <[cemmerson@sidley.com](mailto:cemmerson@sidley.com)> wrote:

Good Morning,

I can't be on the call this am. Will be en route with family from Deer Valley.  
Johnny, I will call as soon as I land.

Happy MLK Day all.  
Catherine

Sent with Good Work ([www.blackberry.com](http://www.blackberry.com))

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**From:** DCardoza@foley.com  
**Sent:** Monday, February 27, 2017 8:18 AM  
**To:** Johnny Amaral  
**CC:** drehberg@mercuryllc.com; David Longly Bernhardt (dbernhardt@bhfs.com)  
**Subject:** Todays Call

Johnny are we going to have a call today? I am triple booked but will call in briefly if it is happening. Thanks. Dennis

**Congressman Dennis A. Cardoza** Ret

**Foley & Lardner LLP**

Suite 600  
3000 K Street, NW  
Washington, DC 20007-5109  
Phone: 202.295-4015  
Cell: [REDACTED]  
Fax: 202.672.5399  
Email: dcardoza@foley.com

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**From:** Johnny Amaral  
**Sent:** Monday, February 27, 2017 9:28 AM  
**To:** DCardoza@foley.com  
**CC:** drehberg@mercuryllc.com; 'David Longly Bernhardt'; Catherine Karen; 'Smith, Ryan A.'  
**Subject:** RE: Todays Call

No need for a call today. Im slammed anyway

---

**From:** DCardoza@foley.com [mailto:DCardoza@foley.com]  
**Sent:** Monday, February 27, 2017 7:18 AM  
**To:** Johnny Amaral <jamaral@westlandswater.org>  
**Cc:** drehberg@mercuryllc.com; David Longly Bernhardt (dbernhardt@bhfs.com) <dbernhardt@bhfs.com>  
**Subject:** Todays Call

Johnny are we going to have a call today? I am triple booked but will call in briefly if it is happening. Thanks. Dennis

**Congressman Dennis A. Cardoza** Ret

**Foley & Lardner LLP**

Suite 600  
3000 K Street, NW  
Washington, DC 20007-5109  
Phone: 202.295-4015  
Cell: [REDACTED]  
Fax: 202.672.5399  
Email: [dcardoza@foley.com](mailto:dcardoza@foley.com)

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